



LOCKDOWN

Compliance matters

A digest of risk, compliance and practice management features for law firms



Back again

Apologies, but it has been a while since the previous issue of **Compliance Matters**. I'm sure our readers will forgive me for the delay. My research revealed that Issue 9 was released on the 16th March 2020. On that day, the broadsheets announced the UK Covid-19 total death toll as 55 (in contrast, the Daily Star headlined with 'Hot Girlie Liz Hurley'). One week later the first national lockdown was implemented.

It's been a challenging year for our clients. For me, what it has revealed is the resilience of the everyday law firm. During our visits to clients in 2020 we've been impressed by the way firms have knuckled down and pulled together. Their adaptability is boundless, no doubt because smaller practices have had so much change foisted on them by the powers that be over the past decade. Business Continuity Plans have been well and truly tested.

Criminal firms have been hit hardest by the pandemic as their income taps have been turned

off. However, the vaccines provide some light at the end of the tunnel.

Conveyancing practices have had the benefit of the stamp duty holiday, which has created a mini-boom in transactions and helped to compensate for reductions in other work. Childcare and Family work has generally been robust through 2020 as lockdowns impact on family relationships.

At JRS, we have been adapting our support for clients in order to assist them during the unusual circumstances. This has meant an increased focus on health, safety and the mitigation of Covid-19 risks. In this issue, we highlight how law firms and auditors have, themselves, adapted to the increased remote working. We also flag up some of the downsides of work pattern disruptions, such as the increased risk of cybercrime, along with staff health, safety and wellbeing issues.

As always, we highlight the latest developments in legal aid. **Andy Bean** summarises the changes in remote auditing practice and **Steve Barnes** provides important information about forthcoming LAA visits.

Dean Grindle
Editor



New money laundering 'guidance' released



The Legal Sector Affinity Group (LSAG) has updated its **anti-money laundering guidance** for the legal sector. These are available on the [Law Society website](#). The existing guidance was reviewed following the introduction of regulations that implemented the EU's 5th Money Laundering Directive. The regulations came into force on 10 January 2020.

At 212 pages, brevity was clearly not the watchword of the LSAG. Moreover, the lack of a crisp summary of the changes means that this guidance will mostly go unread.

We can't help feeling profound disappointment that the LSAG is seemingly unable to produce something more useful and practical for the mainstream law firm.

We have made some significant amendments to our **Quality Procedures Manuals** to accommodate these changes for our clients. In addition we will be ensuring that the Firm-wide AML Risk Assessments that we help prepare are updated in line with the new regulations.

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Transparency Trauma



The SRA is continuing to take a hard line stance in relation to its **Transparency Rules** compliance. We are seeing non-compliance notices raised often for minor issues. Most of these involve alleged inadequacies in price transparency, with the SRA feeling that firms haven't gone far enough in defining their likely fees.

The SRA also appears to be particularly critical of a lack of information about **VAT on fees** and disbursements.

Please ensure that your **Complaints Policy** is on your website along with the **SRA 'Digital Badge'**. The latter is available on the [SRA website](#).

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Focus on *Remote Working*

Home comforts?

The necessity of working from home has its upsides ... and downsides



For many law firms, there wasn't much time to plan for the introduction of working from home (WFH). It was a case of acting first and considering the impacts later. So what have been the key learning points?

Health and safety

As employers, you are responsible for protecting the health and safety of employees working from home in the same way as if they are working in your offices. This includes employees' mental health. We have devised a Home Working Policy

which we can fold into your Lexcel/SQM Manual. This sets out the obligations on the firm and its staff during WFH, so that it is properly regulated.

Many staff might not have the necessary equipment/setup for remote working. This gives rise to an increased risk of suffering from work-related disorders, so ensure that they are adequately provided for. We encourage firms to ensure that display screen equipment (DSE) checklists are used to assess staff working environments.

Also, consideration should be given to possible increases in stress levels caused by limited support, isolation and the pandemic at large. How are you looking after the welfare needs of staff? Cultivating a sense of teamwork is difficult, but vital. Look at methods of flexible working and encourage staff to establish a routine and work structure. We have developed a Wellbeing Policy should our clients be interested.

Supervision

Increased WFH can result in inadequate supervision of junior staff. Supervisors can't see their staff. Files might be out of the office. Junior staff can't just pop over to the supervisor's desk. PII insurers are aware of this, which is why you

were probably required to complete a huge Covid-19 questionnaire last year.

WFH can result in inadequate supervision of junior staff

It is easier to cover up mistakes when WFH. Mistakes are also more likely when staff are subject to mental strain. So give some thought on how your supervision can be made more effective. This is where case management systems prove their worth.

Telephone systems

Several of our clients have decided to invest in new telephony during the lockdown with some spectacular results. New systems can allow you to port incoming calls where you want and for staff to use their own devices.

IT

Increased WFH has exposed the inadequacies of many an IT network. That systems overhaul that you had planned, but put off, is looking like a bad decision. Those firms operating cloud-based case management systems are seeing significant benefits from that investment. However, WFH also exposes staff to increased risk of cybercrime, which is covered elsewhere in this issue.

Remote Auditing

Andy Bean considers the recent changes in auditing

Whether your firm is **Lexcel** or **SQM** accredited, remote auditing is now well-established. Our experience of this 'new normal' is generally a good one, with most auditors being flexible in their approach.

2021 marks the 3-year audit anniversary for the majority of firms holding the SQM and we are finding SQM assessments more 'picky' than their Lexcel counterparts. Lexcel assessments are annual and, in our experience, more pragmatic. This is because the auditor will be visiting every 12 months and there is continuity of assessor. Lexcel assessors will therefore have developed a good knowledge of the firm over that time.

We believe that for many firms things will never revert to 'normal'

SQM firms are not allowed to have the same assessor twice and our experience is that it is not uncommon to find one assessor finding fault in an area which was regarded as compliant 3 years previously.

Firms need to be clear at the outset about the resources that they have at their disposal due to Covid-19. For example, their ability to scan documents to auditors and to what extent they use a case management system. The availability of staff, due to furlough, also needs to be made clear so that interviews can be arranged as early on as possible, to help reduce disruption to a minimum.



Supervision, and how this has been working, is clearly in focus, especially during these difficult times with remote working at the forefront of an assessor's mind. Firms need to be sure that they are clear and transparent as to how things such as supervision and file reviews have been working, but, more importantly, that there is a clear understanding within the firm as to how these processes have been conducted. The use of technology, with Zoom and Teams, has

become ever more important to meet these requirements.

Of course, many firms have furloughed staff and therefore there has been no need to file review those individuals during this time. Caseloads will have been transferred to non-furloughed staff and therefore encompassed in the file reviews of that fee earner. However, one thing that we have identified consistently, is that firms have **failed to notify clients** of such a change of conduct on their matters.

We believe that for many firms, things will never revert to 'normal' and remote working, hot-desking, paper-light or paperless files and remote access to case management systems will be here to stay. Firms therefore need to adapt now and ensure that they have robust systems in place to manage these changes. In our opinion, SQM does not give firms a strong enough foundation to meet these challenges, whereas Lexcel, along with its more co-operative assessment process, does.

If you want to discuss any concerns you may have over any forthcoming assessments, please contact us.

Focus on *Risk*

Probate cybercrime

Dean Grindle highlights how fraudsters are targeting the Probate sector

Did you know that probate fraud costs in the region of £150 million a year? That's the figure provided by the Society of Trust and Estate Practitioners (STEP).



Sometimes it is perpetrated by members of the family, but increasingly it is conducted by organised criminals who use various methods to divert funds away from beneficiaries. As Conveyancing lawyers have become very cybercrime savvy, fraudsters are moving to Probate work where firms' systems are more porous.

Probate lawyers need to be aware of these risks as fraudsters can obtain large, quick pay outs from very little work.

How does it work

Beneficiary-related fraud uses 'push payment' techniques (also called APP fraud). It happens when fraudsters deceive individuals into sending them money. Because the victim believes the fraudster to be genuine, they authorise the handover of cash.

never accept emailed bank details without authentication

In essence, it is very simple. Probate lawyers have to electronically transfer the funds from an estate to the beneficiaries. All the criminal needs to do is supply their bank details to the lawyer instead of the beneficiaries and... **ker-ching**.

The fraudsters gain access to the email systems, inserting themselves between the lawyer and the beneficiary. The lawyer thinks they have received the beneficiary's bank details, but haven't. They then transfer the funds to the fraudster.

Preventing beneficiary fraud

The main method of fraud prevention is **never** accept emailed bank details without separate authentication. It doesn't matter if they are on a PDF document or in the email itself. For

example, telephone the beneficiary to check details.

Probate lawyers need to be more risk-savvy and look for signs that email systems have been hacked. That way you will be ready for when they execute the push fraud. Look at email addresses, changes in phraseology, formality, salutation etc. In short, be more suspicious about emails.

How good are your systems?

While you can't do anything about the security about your beneficiary's email systems, you can make your own systems more secure. In fact, the SRA, Legal Ombudsman and your insurers will expect you to have effective systems.

Strengthening your security

- Robust **anti-virus** protection
- Up to date **operating systems**
- Secure **Wi-Fi** configurations
- Secure **remote connections**
- Assess risks from **personal devices**

The **Cyber Essentials** scheme is an inexpensive way to check your cyber security



Covid-19 Risks

The health and safety challenges posed by the pandemic

While the financial wellbeing of their firm has been a huge priority for managers, an equally pressing priority was the physical and mental wellbeing of staff and clients.

One of our major tasks has been to work with our clients to look at the steps they have taken in response to the pandemic. As our basis, we used the Law Society **Covid-19 Risk Assessment for Law Firms**. We made a few improvements to the template and have been reviewing it with our clients, documenting the results in the process. It has been a very fruitful exercise.

We have been highly impressed by how well our clients have responded to the crisis. In general, our clients have taken a comprehensive approach to health and safety.

Our risk assessments looked at various aspects including:

- **Social distancing**
- **Use of home working**
- **Reception facilities**
- **Cleaning/sanitising**
- **Provision and use of PPE**
- **Communal facilities/equipment**
- **Signage and awareness raising**
- **Service restrictions**
- **Client appointment handling**
- **Interview practise**
- **Home visits and court attendance**

Following the assessments, we were able to offer suggestions for improvement based on best practise seen elsewhere. We were also able to enhance **Quality Procedures Manuals** to include additional policies for staff health and safety.

We have built up an excellent knowledge of what good practice looks like and have set out some of our key observations.

Keeping safe

- Restrict services to **appointment-only**
- **Discourage clients** from attending the offices and offer alternatives
- Where feasible use **floor marker tape** and **one-way systems**
- Consider **Perspex screens** in interview rooms and reception
- Restrict interviews to **larger rooms**
- **Minimise the time/distance** for clients in transit to interview rooms
- Ensure staff **sanitise** communal equipment (e.g. printers) after use
- Consider **occupancy limits** in kitchens
- Ensure staff **make their own** refreshments
- Add **Covid-19 notices** to your email footers and websites

LAA annual audits

Steve Barnes discusses the LAA's latest activities

The first lockdown led to a blessed, but brief, lull in LAA audit activity and the postponement of the usual annual 'visit'. Things have moved on apace, however.

What to expect

If the LAA have not already been in touch, rest assured that they soon will be, with a heady mix of remote file audits, self-reviews, face-to-face meetings and requests for documents and records. These include family trees, supervisor forms, WIP, proof of accreditations, qualifications, use of agents and category-specific compliance records.

Some LAA managers spread this activity over a few weeks; others limit it to one day; there is no set formula. Some will ask you to review a selected file sample and report back (followed up by a dip sample); some will ask you to send files, which will comprise the usual suspects: claims with low profit costs, unusual claim codes, potential split claims, high disbursements and any claim/code duplications.

There will be the usual request for feedback regarding the PAR (**Provider Assurance Report**), on how you are performing against the various KPIs. Don't expect these statistics to be reliable and be prepared to challenge them. There have been instances of challenges about increased POA claims, where the LAA representative does not appear to be aware of their own rule changes during lockdown. They will certainly want to look at fund take and the reasons behind any decrease (yes, quite). So be prepared to answer questions about how Covid-19 has impacted the firm.

Duty Solicitors

Last Spring there was a relaxation of the '14-hour rule' when all of the courts were not

operating. That is unlikely to be the case any longer and it is imperative that you do not let things slide. Dust off those **Duty Verification Forms**, in readiness for close scrutiny at your next visit, keep logs up-to-date and be sure to record justifications for any gaps.

Assurances had been made that there would be a degree of flexibility, when looking at files and records maintained during the lockdown. However, the LAA is not noted for its flexibility and we have started to witness some 'interesting' interpretations of what is deemed reasonable.



Form-filling woes

My headline message of caution relates to form filling and your ability to get clients to sign these and provide **proof of means** (where applicable) during the unprecedented pandemic.

The latest guidance is that you must make your best attempts to get any legal aid funding application form (Applicant's declaration for online submissions/Legal Help/CW2 etc.) signed and completed on each and every matter/case. This would include the option of seeing the client in person at the office or court, sending the form in the post, using an online method such as DocuSign or accepting a scanned copy.

It is hoped that each of these options would be acceptable, but be aware that not every LAA auditor will adopt the same approach and so we have no definitive answers until we have experience of more audits. The key point is that, where you have been unable to get the form signed (and this relates to all files from last March's first lockdown onwards), your file notes

must clearly record what attempts have been made and, ultimately, why you have not been unable to comply. We suspect that any failings in this regard will amount to nil assessment at audit.

Zoopla Hoopla

There have been some intriguing interpretations of rules recently, which have included the use of an online property valuation site, to challenge the equity assessment of an applicant's home. Another was requesting the postcodes of fee earners' home addresses to check the mileage claims to and from court etc!

Everyone loves file reviews

The most common query received in the last 12 months is about how many **file reviews** will be expected during lockdown? Remember that the contract requires supervisors to conduct the file reviews of those they supervise and, so, this is not just a Lexcel/SQM issue.

The answer is that while anyone who was furloughed is exempt, there should be no other gaps during lockdown. During home-working, the argument is that supervision and file review becomes even more important and so you will need to have complied in full. They will be keen to see how effective overall supervision has been during this period and, in my experience, firms have coped very well, utilising Teams and Zoom to keep close contact and support for everyone. However, the LAA will be looking at this in some detail, to ensure that this is the case.

Key Points

- **Expect** an LAA visit/audit
- Maintain '14-hour rule' compliance
- Pay attention to LAA form **signatures** or **justify** lack of signatures
- Maintain your **file reviews**
- Ensure your **supervision** is adequate
- **Contact us** when you are notified of an audit

