

## RISK MANAGEMENT AND RECENT AMENDMENTS TO SOLICITORS' ACCOUNTS RULES

### Risk Management

The effective management of risk is now a requirement under the Solicitor's Code of Conduct and places a regulatory obligation on all principals/directors of law firms. Risk management is not merely about avoiding client claims but encompasses many areas of business management, such as: strategic threats to the business, regulatory compliance, loss of reputation, loss of key personnel and business interruption etc. In order to demonstrate that an effective risk management framework is in place, law firms not only have to consider the risks that are posed in running their business, but also the risks that are specific to the legal environment and the areas of law in which they practice. So how do law firms demonstrate risk management?

One successful method is by gaining Lexcel accreditation. Lexcel is the Law Society's practice management standard. By achieving Lexcel accreditation law firms not only demonstrate their commitment to quality, but also implement a framework which facilitates the management of risk. This ranges from ensuring that key policies are implemented in order to avert certain claims to ensuring systems and procedures are in place to minimise risk. Lexcel has been recognised within the guidance to Rule 5 of the Solicitor's Code of Conduct as a means of demonstrating compliance with the requirements of the rule, including effective risk management.

Risk management depends on the size of the practice and also the type of work the practice undertakes. Consider, for example, business continuity planning (now a requirement under Rule 5 of the Solicitor's Code of Conduct and addressed within Lexcel). A large city practice would require a fairly comprehensive business continuity plan. This is not only based on its location (and the greater likelihood of interruption to its business as it is located

within a city), but also on the greater risk it faces in not getting the whole practice up and running as quickly as possible and delivering the required level of service to its clients, without causing damage to its reputation. Therefore, issues such as: premises, IT, staff, access to client matters and communication to name a few, would need to be considered in some depth and a number of key people would be involved in drafting the business continuity plan to ensure it is appropriate and covers all aspects of the business. Whilst these considerations may be relevant for, say, a provincial sole practitioner, the plan would not need to be as comprehensive as it would be a lot less complex (both in planning and operational execution) for the practice to become fully operational and would involve predominantly the principal in drafting it.

Nevertheless, Lexcel asks both types of practices to consider the same points in relation to business continuity planning and therefore ensures the risk is managed according to the impact on the firm. In doing this, it provides great flexibility as the structure it provides is appropriate to all types of Legal practices.

It is therefore no surprise that a number of Professional Indemnity insurers and brokers look upon Lexcel favourably. It instils good management systems which enable firms to learn from mistakes and minimise the risks in the future. In the current economic climate where it is forecasted that the PI renewals market is set to harden, law firms need to embrace the principles of risk management in order to minimise costs and increase profitability.

## **Solicitors' Accounts (Residual Client Account Balances) Amendment Rules 2008**

The Solicitors' Accounts Rules 1998 (SAR) will be amended from 14 July 2008.

The amendments introduce specific obligations for the prompt return of surplus client funds and reporting to clients if funds are retained. They also permit solicitors to deal with the withdrawal of smaller residual client balances themselves, without recourse to the SRA.

### **Retaining surplus client money**

A new rule 15(3) SAR will impose a specific obligation to return client money promptly as soon as there is no longer any proper reason to retain the funds.

### **Reporting to clients**

A new Rule 15(4) SAR will require a solicitor to inform a client promptly of the amount of any funds retained at the end of a matter, and the reason for that retention. This rule also introduces an obligation to report in writing to the client on at least an annual basis if funds continue to be retained, with an explanation for the ongoing retention.

### **Residual balances**

Under an amended to Rule 22 SAR, solicitors will have the option to withdraw residual client account balances of £50 or less without prior SRA authorisation, subject to paying the balances to a charity and complying with other safeguards set out in a new rule 22(2A).

### **Procedures and systems**

Solicitors wishing to deal with residual balances of £50 or less, without prior SRA authorisation, will need to set up appropriate internal procedures and

systems to ensure compliance with the new provisions of Rule 22.

New paragraphs 4.6 and 4.7 of the Guidelines for Accounting Procedures and Systems at Appendix 3 SAR state that policies should be established for the timely closure of old files and prompt accounting for surplus balances, and for reporting to clients when funds are retained.

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