

BEST PRACTICE

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THE LEXCEL NEWSLETTER OF RECOGNISING EXCELLENCE

SOLICITORS PROFESSIONAL INDEMNITY INSURANCE RENEWAL IN 2009 WILL BE THE MOST CHALLENGING FOR YEARS BY: NTEGRITY Insurance Solutions

Solicitors Journal in March commented that negligence claims against solicitors heard in the Chancery Division of the High Court more than doubled last year. Most negligence claims never make it to court yet still involve substantial expense for solicitors.

At times of economic decline negligence claims tend to increase as those aggrieved seek to place blame for losses on advisers. We are already seeing an increase in the number of possible claims notifications and some alarming quantum.

So how will this year's professional indemnity renewal be affected by the claims horizon and volatility in financial markets?

We expect the 1 October 2009 renewal to be the most challenging for many years.

New Insurer capacity
New insurer capacity is entering the market this year and this will help ensure that incumbent insurers continue to offer keen terms.

Against this, Insurers can no longer rely on investment income to save them from shortfalls in the premium they collect over claims payments. Most insurers who have been in the game for some years have a claims record which is pressuring them into seeking rate increases.

Initial signs are that rate increases could be 10-15% but it could be much more for some. This is unlikely to be

welcome news at a time when practice fee income is under pressure.

Hard market dead ahead!

Seasoned market observers agree that we are headed towards a 'hard' insurance market but what does a 'hard market' mean?

One of the painful symptoms is of course increases in premium, but insurers also tend to:-

- (i) Restrict cover offered, reduce the limits they offer or increase excesses,
- (ii) Adopt a tougher attitude on claims delaying payments, the process and raising more objections when claims are presented.

You can protect your firm from a more hostile insurance market

1. **Show how your firm is different** - make sure your proposal shows your firm and its risk management in the best possible light,
2. **Engage a broker with the ability to understand** your firm and present it to potential Insurers,
3. **Don't flood the market engaging several brokers** - it is counterproductive when all firms are vying for renewal attention at the same time,
4. **Review your practice risk management approach,**
5. **Select a broker with in-house claims expertise to support you on claims.** Claims disputes are increasing,
6. **Obtain a quotation for "RExcell", the professional indemnity facility we are tailoring for Lexcel**

accredited practices advised by Recognising Excellence. **RExcell will reduce your overall cost (not just premium) and secure valuable additional cover recognising your commitment to practice quality.**



Gary Horswell of Ntegrity Insurance Solutions

NTEGRITY INSURANCE SOLUTIONS specialise in professional indemnity insurance and their team have worked closely with the legal profession since SIF days.

With the experience of handling professional indemnity insurances for small partnerships up to top 50 LLP's, NTEGRITY are ideally positioned to provide you with the expertise you need at the keenest price.

Ntegrity are offering a facility for the 2009 renewal providing a range of benefits exclusively for Lexcel accredited firms.

To contact Ntegrity please visit their website: www.ntegrity.co.uk or telephone them on 0845 638 3273

RECOGNISING
EXCELLENCE

Raising Performance

LEXCEL BEST PRACTICE COLUMN:

The firm's Business Continuity Plan has been developed in line with BS25999. This standard, based on established good practices, establishes and defines the principles and processes of business continuity management. The Plan details the actions that should be followed in the event of a disruption of normal activities, and provides essential information and contact details. An overview is published on the firm's intranet together with the firm's business continuity policy.

The Residential Conveyancing team maintains its own risk register to monitor unusual circumstances or issues within their matters.

A recently appointed fee-earner described how she tries to make a note in the cover of her files of the time left within the quoted fee, in order to try to avoid exceeding the estimate without discussing it with the client.

The whole team of fee earners starts every day with a department meeting where matters and general

continued overleaf...

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LEXCEL BEST PRACTICE COLUMN: continued...

issues are discussed, ideas pooled, risks discussed (where appropriate) and workloads evaluated. This includes supervisions where required.

Open matter files are stored in the office in folders that are colour-coded according to their age, there enabling easy identification of ageing an potentially dormant matters.

All case files throughout the department are subject to 'call forward' system, which systematically presents the file to the fee earner, after a certain time, for review. This approach ensures that no file is overlooked for more than a predetermined period. Risk matters are subject to a monthly review/audit and a monthly high risk report for each department is provided to the managing partner.

The Firm has a Risk Management Committee made up from representatives responsible for supervising different categories of work. They have conducted a full review of Risk Matters and provided more in-depth guidance for Fee Earners on how to deal with any change of risk during the life of a Matter.

For a starter pack, or free of charge visit to discuss Lexcel, please contact John Edwards on **0207 078 0840** or email: john.edwards@recognisingexcellence.co.uk

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LEXCEL V 4 THE LAW SOCIETY'S PRACTICE MANAGEMENT QUALITY MARK

By John Dewar, Chartered F.C.I.P.D. Lexcel Assessor/Consultant

In the last issue of **BEST PRACTICE**, John Dewar discussed Some of the common reasons for non-compliance that appear in Reports from Assessors to the Law Society.

In this issue, John follows on with further advice starting with:

What can go wrong at Assessment?

The first area that tends to go wrong is.

The Lexcel Practice Management Standards asks for:

"A documented review of all policies and plans at least annually and that there must be a documented person responsible for each policy and plan".

I have seen several attempts to ensure that Firms comply with this requirement. It is really quite simple. In the section of the Office/Practice Manual dealing with who is responsible for maintaining and updating the Manual all that needs to be added is, "The Managing Partner or Practice Manager or whoever is responsible for reviewing and maintaining all Policies and Plans set out in this Manual unless specifically referred to as someone else". The Following are the Plans and Policies that should be reviewed and the frequency.

Six Monthly Reviews: The Business Plan, the Marketing Plan and the Services that are offered to clients that are all referred to in Section (2.3) of the Standard.

Annual Reviews: Are required for the following and there should be a named person responsible for the Review

and Maintenance of each Policy or Plan.
Risk Management records Section (1.2).
Quality systems and issues Section (1.3).
Equality, Diversity & Discrimination records Section (1.4).
Money Laundering records Section (1.5).
Health & Safety issues Section (1.7).
Community & Social responsibility Section (1.8).
The Business Plan Section (2.3).
The Marketing Plan Section (2.3).
The Services that are offered Section (2.3).
Business Continuity Plan Section(2.4).
ICT Plan Section (4A.1).
Data Protection records and issues Section (4A.2).
Information Management requirements Section (4A.3).
Email requirements and information Section (4A.4).
Website requirements and information Section (4A.5).
Internet issues Section (4A.6).
Recruitment Plan Section (5.1).
Training & Development Plan section (5.6).
Review of responsibilities, objectives, performance, training for staff section (5.6).
Data generated by independent File Reviews Section (6.5 (f)).
Risk Assessment Data Section (6.7).
Client Care Policy Section (7.1).
Review of Complaints Data and Trends Section (7.4).

A new addition to the current version of the Lexcel Practice Management Standard is the need for a review of the Strategic Risk Section (1.2 (a)) to the Firm. Partners should be giving consideration to areas such as, Succession Planning.



John Dewar

Who will replace the existing Partners or key staff within the Firm and how are you going to plan for the sudden departure of staff without it impacting too severely on the performance and service of the Firm? Is the Firm too dependent on one or two key clients or fee earners? What will be the financial impact on the Firm of the financial decisions made by the Partners or if a major client is lost? How will the Firm cope if there is long term absence of key fee generators?

Business Continuity Plan Section (2.4)

The Lexcel Practice Management Standard & Solicitors Code of Conduct asks, "How are you going to demonstrate you can and have effectively tested your plan"? This should also include your ICT backup and retrieval arrangements. Most Firms have difficulty in demonstrating how they do this.

Email/Website/ Internet Policies Section (4A.4/4A.5/4A.6)

It is the responsibility of all Firms to ensure that staff understand what is acceptable and what is not acceptable regarding the use of email, websites and internet and that they apply the policies fairly and equitably. Firms need to ensure that the various Policies and Procedures are understood by staff.

People Management

There are new requirements in Section 5.3 (g) that encourages Firms to check Practice Certificates and Disciplinary Records of new people as part of the Recruitment Plan or Strategy. This can be done fairly easily with the appropriate professional body. Section 5.5(b) as requires Firms to ensure that Supervisors and managers are given the appropriate training in leadership and management skills not only for the Lexcel Practice Management Standard but also the Solicitors Code of Conduct.

Supervision & Operational Risk Management

Another area that frequently causes non-compliance is File Reviews, Section (6.5). The Firm needs to ensure that there is a mechanism to check that they are being carried out thoroughly. It is not unusual for assessors to review a matter file and find something fundamentally wrong with it despite the fact that there is a File Review Sheet on the matter file stating that everything is satisfactory.

There are occasions when reviewing matter files and Office/Practice Manuals that the Assessor will discover there is no or limited reference to Operational Risk, Section (6.8) of the Lexcel Standard. All Firms need to ensure that a Risk Assessment is carried out when the matter is initially opened, again during the life of the matter and finally when the matter is complete. Approval is not always given or sought from Partners or Supervisors when a new matter is opened.

Client Care

Practice Rule 2 Section (7.2) Lexcel Practice Management

Standard

When asking why key documents are missing Assessors are frequently told by Partners and Fee Earners that they "do not see the need to give their client a Rule 2 Letter". "I have known him/her for years and he/she has been a client here before I qualified". "My father dealt with them before I took over".

or

"I don't need to tell my client what it will cost as he/she knows I charge a fair price". "I have known them all my life".

Practice Rule 2 is a requirement for all clients and as such failure to have one on file will result in a major non-compliance.

Complaints

The Lexcel Practice Management Standard Section (7.4(c)) and Solicitors Code of Conduct require Firms to ensure that when the Client Care/Complaints Partner changes, Client Care Letter or Terms of Business should be changed and the clients advised. Also when the Client Care Partner is also a Fee Earner then another person should be designated as the Complaints Partner for their work.

It should be remembered that failures in administration and service delivery, rather than lack of legal knowledge, tend to lead to most complaints and claims against solicitors, particularly in the area of casework and communication with clients. Lexcel is the framework to enable you to take preventative action and put systems and procedures in place which will help minimise mistakes.

File and Case Management

The Lexcel Practice Management Standard Section 8.6(f) requires Firms

CONGRATULATIONS:
to the following practices on recently achieving Lexcel Certification.
Bright LLP
Lodders LLP
Stone King Sewell LLP
The Contracts Team
University Hospitals NHS Trust Bristol
Wolferstans and Frettons

Also, good luck to the other firms who are being assessed over the next three months.

to inform the client 'in writing' if the person responsible for the matter changes. This tends to be overlooked and can lead to a non-compliance.

Section 8.6(e) also requires Firms to provide the client with continuing information on costs. If clients are not advised they may complain or the Fee Earner may have to write-off the extra costs which is not very cost effective for the Firm. It does not take long and should be part of all Fee Earners file review process.

One of the most frequent non-compliances tends to be under the Lexcel Practice Management Standard Section 8.8. The unique Matter Number is not used or there is some other system in place which does prevent documents from being traceable. Often documents are miss filed because there are no reference numbers. Occasionally Assessors are told that the reason for not putting matter numbers in the reference area is that they do not treat clients as a number. This has nothing to do with treating clients as a number. The client is still addressed appropriately in the normal way. The reference number is for in-house purposes and to prevent documents being lost or misplaced.

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APPARENTLY THESE ARE STILL LAW IN THE GOOD OLD U S OF A.



Seattle

You may not carry a concealed weapon that is over six feet in length.

Everett

It is illegal to display a hypnotized or allegedly hypnotized person in a store window.

Alabama

It is illegal to wear a fake moustache that causes laughter in church.
It is illegal for a driver to be blindfolded while operating a vehicle. Really!

Kentucky

One may not dye a duckling blue and offer it for sale unless more than six are for sale at once.

New Jersey

It is illegal to wear a bullet-proof vest while committing a murder.
It is against the law for a man to knit during the fishing season.

UNIVERSITY HOSPITALS BRISTOL FIRST NHS TRUST IN THE SOUTH WEST TO GAIN LEXCEL ACCREDITATION



Bristol Royal Hospital for children

Peter Harrowing has been University Hospitals Bristol's in-house solicitor since 1997.

Prior to studying law, Peter was Chief Pharmacist at the hospital and had a keen interest in quality standards.

Peter had known about Lexcel, and what it could offer, for quite some time and started thinking about it seriously around 4 years ago. But, with pressures of work, it was 2008 before he decided to take action and lead his department along the Lexcel route. He recognised that it was the right way for his department to go in order to provide an efficient and effective service to this 'clients'. Peter sent one of his staff on a one day introduction to Lexcel course and that gave him the impetus to proceed.

Recognising who his clients really were, was one of the first things Peter was able to identify once he started looking at Lexcel with a business consultant. On the face of it, it may appear that the department had just one client – the Hospital, whereas, in fact, Peter was able to recognise that each clinical division within the hospital was a separate client. Each has a Head of

Department and runs as a separate smaller (but still quite large) business in its own right. Understandably, the hospital's main priority is with the medical aspects of running a hospital. Peter was keen to increase the profile of the legal department within the hospital.

The business consultant prepared a quality manual, had regular meetings with Peter and his team and provided training in Lexcel requirements. He provided a gap analysis to highlight where the department was with regard to Lexcel and where they needed to be. The consultant then referred Peter to Recognising Excellence for assessment, who sent along Neil Partridge to carry out the assessment.

Peter commented that the process of achieving Lexcel was hard work, but well worth it. Having Lexcel has made life easier and the department now works more closely with each division on each case, from the outset and up to conclusion. Reporting on each case has improved greatly and improved working relations with each of the divisions. Communications have improved all round and the Trust is impressed that its legal department has gained this accolade.

THE LEXCEL OFFICE COLUMN

by Chantal Ben-Nathan,
The Law Society

Having a clear and imaginative marketing strategy can help promote your business more effectively and make the most of current opportunities.

Preparing your marketing plan

Try to avoid producing lengthy documents and keep your plan succinct and logical. Ensure that your practice identifies the following:

- What your strengths and weaknesses are
- What services you offer
- Who your services are aimed at
- Are you a specialist in your field
- How do you differ from your competitors
- How attractive are your services to clients
- How do you deliver your services better than anyone else

What are your ambitions?

Although there are many uncertainties for practices, for example the challenging economic climate, the increase in competition that the Legal Services Act will introduce, it is vital that your practice knows where it wants to be in 6 months, 1 year and 3 years. Another important factor is to ensure all the partners in your practice hold the same ambitions, are striving towards the same goals and are clear about the role they play in the overall success of achieving the goals.

Do not neglect financial aspects.

A good marketing plan makes financial sense as well as embracing creative ideas. Some of the main

financial considerations are:

- Turnover
- Forecasting
- Return on investments
- Administrative costs
- Setting a marketing budget

When you are deciding the size of your marketing budget, it is worth considering ten questions:

1. What are your existing clients worth to your business?
2. What is a new client worth to your business?
3. What is a lapsed client worth to your business?
4. Who is your client base?
5. Are your clients responding differently to how they have in the past?
6. What have clients been worth to your business in the past?
7. What might they be worth in the future?
8. Can you influence your clients and if so how?
9. How will your influencing activities affect how much a client will spend on your services?
10. What is the likely overall return on your marketing resources?

Clarity

Your marketing plan should also make it apparent what you want marketing to achieve. For example, do you want to improve client retention, offer new services to existing clients, win new clients, focus on a particular geographic area or extend your practice to new areas?

Whatever you want to achieve, ensure there is clarity in terms of the steps you need to take to meet your objectives.

