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# BEST PRACTICE

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THE LEXCEL NEWSLETTER OF RECOGNISING EXCELLENCE

## SRA UPDATE

Achieving the right outcomes – learn about the SRA's plans

[SRA Update Issue 12 – February 2010](#)

Outcomes-focused regulation is how the SRA will operate from next year, concentrating on the high-level principles governing practice and the quality of outcomes for clients, rather than tick-box compliance with rules. You need to know what we are planning, and how it may help your practice in the changing legal services landscape.

Changing both the regulatory requirements and the manner of supervision and enforcement will require significant effort and consultation with (and education of) stakeholders. Our new strategy paper sets the scene for this fundamental shift in regulation, and includes examples of how the new Solicitors' Code of Conduct may look and how

the approach could be applied in different situations. The aim is to produce a system that is not over prescriptive, will allow the SRA and firms to work together to improve standards, and will concentrate SRA resources on the issues and activities that pose the greatest risks to consumers and the public interest.

### Key Elements

Setting high-level professional standards expected of a solicitor—along the lines of those currently in [rule 1 of the Solicitors' Code of Conduct](#)—and how they should be experienced by clients and others

Only retaining detailed rules if they are genuinely needed to protect consumers and deliver high standards of service

Building a more constructive

relationship between the SRA and firms, moving away from investigation of rule breaches as an end in itself, to a discussion of whether a firm can demonstrate that it is acting in a principled manner and achieving the desired outcomes for clients

Focusing enforcement on breaches of principles and failures to achieve defined outcomes: Non-compliance with detailed rules will be less important if there has been no material impact on the defined outcome or principle.

We will consult on the detail of the new regime during 2010, with the new Code of Conduct coming into force during 2011. We will begin piloting new approaches to supervision as soon as possible.

For more information go to: [www.sra.org.uk/consultations/achieving-right-outcomes/](http://www.sra.org.uk/consultations/achieving-right-outcomes/)

## HEADS UP

I thought you might like to know that the Law Society published a new Practice Note on client care letters, picking up many recent changes brought about by the EU Services Directive, and amendments to costs information forthcoming in March 2010.

Client care letters are a vital tool for communicating essential information to your client at the outset of a retainer. This practice note provides examples of how you can communicate all of the information required by rule 2 of the Solicitors' Code of Conduct to your clients in a clear and effective manner.

The latest version has been updated to reflect changes in the Code, which come into force on 1 March 2010, and the implementation of the Provision of Services Regulations 2009. We recommend that you refer to this online version to stay up-to-date with changes.

For more information on client care go to: [www.lawsociety.org.uk/clientcare](http://www.lawsociety.org.uk/clientcare).

For help navigating this practice note, contact the Practice Advice Service.

RECOGNISING  
EXCELLENCE  
Raising Performance

LEXCEL  
BEST PRACTICE  
COLUMN:

For a client with poor vision, the fee earner provided large print in correspondence and placed greater emphasis on verbal contact to assure effective communication and level of service

The partners receive monthly reports about the progress of the file review system, highlighting those that are 'falling behind', and any trends arising from the reviews.

The firm has been involved in a number of charitable initiatives over the past year. They are also starting to explore the environmental management standard ISO 14001 and are looking at the ways of creating a healthier work place.

There are current plans to train all staff on the principles of working capital management and how it applies to them.

A fee earner uses a red tab in the correspondence file to mark where he has updated clients on costs. This makes the existence of cost updates easy to check.

The department is currently considering moving to digital dictation to improve efficiency and continues to explore ways of becoming 'paper-light' to reduce pressures on storage space.

When giving cost updates, some fee earners are taking the opportunity to confirm that the costs accrued are within the original estimate, and that this is unlikely to be exceeded. This is good practice and is an approach which is recommended by the SRA.

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## COMPLAINTS HANDLING

(Are you ready for the Legal Ombudsman?) - by Cath Poulter

The Legal Ombudsman (established by the Office for Legal Complaints) will start to deal with complaints in the second half of this year. This could have a major effect on some firms because of the statutory requirement for the ombudsman scheme to charge case fees. A case fee will be payable unless a complaint is resolved in favour of a firm and if the ombudsman is satisfied that the firm took all reasonable steps to try to resolve the complaint. This is designed to have a behavioural impact on firms in terms of driving up internal complaints handling and client care standards. Complaints are a business risk and we have to accept that however high our standard of care we cannot keep all clients happy all of the time. But it is useful to take time to consider how effective we are at actually resolving complaints when they do arise. Take a look at any of your matters which were referred to the Legal Complaints Service (LCS) and consider whether there was anything more you could have done (or done differently) to resolve the matter, prevent a referral to the LCS ...and of course to retain the client.

Going forward make sure that....

- All fee earners are familiar with your internal complaints procedure.
- You adhere to the Law Society's Practice Note on Complaints Management dated 21st January 2010.
- Deal promptly with all complaints and keep to the timescales in your procedure.
- Be open minded fair and non adversarial in your approach to complaints.
- When responding to a complaint clearly detail your understanding of the complaint, the reasons you agree or disagree with your client and what the next steps will be.
- If a mistake has been made apologise and offer to put the matter right straight away.
- Refer to the LCS's Guidance on Compensation in order to assess what a reasonable amount of compensation would be to offer appropriate redress for the specific circumstances of each case.

You may also wish to consider involving an independent conciliator. This may be particularly useful when the relationship

with the client is deteriorating; the complaint involves a senior partner in the firm or if for any other reason you are finding it difficult to resolve the matter. Involving a third party can also reassure a client that their complaint is being considered objectively. If you wish to take this approach you can contact the LCS for a referral to the Local Conciliation Officer scheme in your area. This is completely informal and will not be noted on your complaints record. Using this scheme will not preclude the client from actually making a formal complaint but the conciliation and its outcome would be relevant to any subsequent consideration of how your practice tried to resolve the complaint.

### Cath Poulter

Cath is a qualified solicitor with a varied experience in private practice and in house with the Law Society, Solicitor's Complaints Bureau and The Solicitors Indemnity Fund.



Cath Poulter

She is currently a Lexcel and Investors in People Assessor and a Local Conciliation Officer for the Legal Complaints Service. In addition Cath undertakes various consultancy work for the Law Society and individual practices on client care and compliance issues.

### Would you Like Some Help in Dealing With Complaints or Reviewing your Approach to Complaints Resolution?

If you would find it useful to have Cath's independent view of your approach to complaints management or assistance with a particular matter then please call

Recognising Excellence ..... Cath can also deliver complaints handling training to key staff.

#### MONTANA STATE TROOPER

In most of the United States there is a policy of checking on any stalled vehicle on the highway when temperatures drop to single digits or below. About 3AM one very cold morning, Montana State Trooper Allan Nixon #658 responded to a call there was a car off the shoulder of the road outside Great Falls, Montana. He located the car, stuck in deep snow and with the engine still running. Pulling in behind the car with his emergency lights on, the trooper walked to the driver's door to find an older man passed out behind the wheel with a nearly empty vodka bottle on the seat beside him. The driver came awake when the trooper tapped on the window. Seeing the rotating lights in his rear view mirror, and the state trooper standing next to his car, the man panicked. He jerked the gear- shift into 'drive' and hit the gas.

The car's speedometer was showing 20- 30- 40 and then 50 MPH, but it was still stuck in the snow, wheels spinning. Trooper Nixon, having a sense of humour, began running in place next to the speeding (but stationary) car. The driver was totally freaked, thinking the trooper was actually keeping up with him. This goes on for about 30 seconds, and then the trooper yelled. "PULL OVER!"

The man nodded, turned his wheel and stopped the engine. Needless to say, the man from North Dakota was arrested and is probably still shaking his head over the state trooper in Montana who could run 50 miles per hour.

Who says troopers done have a sense of humour?

## CONGRATULATIONS

Well done to  
Andersons Solicitors,  
BPE First LLP,  
Ersan & Co Solicitors  
and  
Gadd & Co Solicitors  
on achieving Lexcel  
Certification recently.

# OUTCOMES –FOCUSED REGULATION (“OFR”)

by Stuart Brothers

## OFR Proposals

The proposals set out in the Solicitors Regulation Authority’s consultation paper (Achieving the Right Outcomes), whilst not revolutionary in the terms of regulation of solicitors, can certainly be considered more than evolutionary.

SRA’s paper proposes:-

- a move away from an analysis of rule breaches to an assessment of whether solicitors are “acting in a principled manner and achieving desired outcomes for clients”,
- a reduction in enforcement being based on a breaches of detailed rules and a migration to it being based on a failure to achieve desired outcomes, and
- potential greater use of Regulatory Settlement Agreements rather as an alternative to disciplinary action.

SRA may well wish to portray to the legal profession that it is sensitive to feedback from “tick & bash” audits which have been perceived as concentrating on minor rule breaches with little or no adverse client protection impact. Indeed, the horrifying increase in practice interventions and closures appears to be principally attributable to either defalcation or inadequate operational, strategic & financial management than breaches of rules in themselves.

OFR may be more effective in identifying the route causes of such failures. Some may even consider it inappropriate for SRA to be changing tack at this stage given that 78% of firms visited by the PSU during the quarter to June 2009 had either serious breaches of SRA rules and regulations or required a referral to another part of SRA for investigation. Looking at the history of the FSA as a regulator, it has moved away from highly prescriptive regulation to an approach which is more akin to OFR, presumably for the same reason that this is more effective at identifying and dealing with key risk areas.

Some solicitors may breathe a sigh of



Stuart Brothers

relief thinking that their regulator has “gone soft”. Any such view would be mistaken – the conciseness with which the accounts rules need to be complied with will presumably remain and, if anything, solicitors (small practices, in particular) have paid inadequate attention to high level matters. Whilst the Code of Conduct rules will be amended after the consultation, any breach of the rules will still be used to advantage of any claimant in a professional negligence action when there is a nexus between the breach of any conduct rule and claimed losses. If financial stability is perceived as a key regulatory hotspot then the profession could move towards having capital adequacy requirements akin to those entities regulated by FSA which some solicitors may regard as most unwelcome.

## Effect on Lexcel

In many ways, Lexcel has pre-empted the apparent change in regulatory focus to its emphasis on outcomes in that it has focuses on various high level principles designed to achieve the regulatory objectives – structures and policies, financial management, supervision and risk management etc. SRA is likely to pay increasing attention to the “suitability to manage” requirement and Lexcel is an invaluable tool in this regard. Given that regulatory compliance is an intrinsic part of Lexcel’s requirements, it will be important to monitor any changes OFR may bring about and reflect in Lexcel’s requirements.

## TOOLS

I recently received this question from one of our Lexcel Assessors: During the feedback we had an interesting conversation/debate about the destruction of electronic data. It is clear that when you shred/burn a paper file, it is gone forever, but with electronic data, even if you delete it from the file, it still remains within the computer. (Don’t ask me how!). The question is - how do firms properly destroy the electronic data they might hold (without destroying their server!).

Have you any advice that you can offer on this? I have checked with our database boys and they have recommended a free download tool on the internet called Eraser, (top of the list if you Google it) apparently it is recommended by the MoD. Also, there is software out there which can be purchased which is approved by British Standards for electronic date removal. As Tesco say...every little helps...

## THE LEXCEL OFFICE COLUMN

by Anika Patel

UPDATE FROM THE LEXCEL OFFICE

2009 saw the introduction of Legal Disciplinary Practices (LDPs) by the Solicitors Regulation Authority (SRA), along with a number of other changes in the legal market. Despite the difficult market conditions the number of firms accredited with Lexcel rose by 19 per cent, the largest annual increase since the standard was launched in 1998, and currently nine per cent of all firms in England and Wales have Lexcel.

The Lexcel office have been involved in various relationship management activities with insurers, banks and other business influencers to increase awareness of Lexcel, and the focus for 2010 is to improve consumer knowledge of the standard.

## LEXCEL INTERNATIONAL

As interest for Lexcel increases domestically, there is evidence from International regulators and Law Societies of demand for Lexcel in their jurisdictions. Overseas practices are eager to utilise an established standard that will provide recognition of best practice, particularly in developing markets. We are currently developing the standard to be applicable internationally. If you would like to receive updates on this topic please e-mail [lexcel@lawsociety.org.uk](mailto:lexcel@lawsociety.org.uk)

## PROFESSIONAL INDEMNITY INSURANCE SEMINARS

As part of the Law Society’s strong commitment to working with firms on their PII renewals the Society is holding free regional seminars organised to assist firms gaining a better insight into the PII market, the processes involved in applying for renewal policies and tips to presenting their practice to insurers. The seminars are to be held in association with PII brokers Prime Professions Ltd and will take place in May and June 2010 in various key cities around the UK. The seminars will cover a range of topics including renewal planning, the importance of good working relationships with brokers and insurers and ideas on what insurers require from firms. Those that should attend the seminars include managing partners, partners, solicitors, managers or those responsible for managing PII for a law firm. If you wish to pre-register your interest in attending a free seminar please email your full contact details to: [PIIseminars@lawsociety.org.uk](mailto:PIIseminars@lawsociety.org.uk)