

Lexcel guidance

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The Law Society

GUIDANCE ON THE LEXCEL PRACTICE MANAGEMENT STANDARD

Issue 3, February 2005

Additional guidance for the Lexcel Standard 2004

This issue contains additional guidance on the interpretation and application of the Lexcel Standard 2004. It contains some initial – but by no means comprehensive – guidance on certain requirements within the standard, as well as requirements that have so far been brought to the attention of the Lexcel Office as requiring further guidance.

As members of the Lexcel community (awarded practices, practices registered on the commitment scheme, assessors and consultants etc) start to work with the 2004 Standard – from 1 January 2005 it is compulsory for all assessments to be conducted against the 2004 Standard – further guidance will be issued on an ongoing basis in *Lexcel Link* and *Lexcel Guidance*. In order to do this we welcome continued feedback on your experiences of implementing the requirements and assessing against the standard.

The aim of this additional guidance is to supplement the detailed *Assessment Criteria* contained within the 3rd edition of the *Lexcel Assessment Guide*, which will remain the authoritative publication on the information required by practitioners, assessors and consultants on the Lexcel Standard 2004. The following guidance should therefore always be read in conjunction with the full requirements of the standard and it is recommended that the reader first gain a familiarity with the requirements and structure of the standard as well as the operation of the Lexcel scheme.

For further information please consult www.lexcel.lawsociety.org.uk. Alternatively, please call the Lexcel Office on 020 7320 5749 or email lexcel@lawsociety.org.uk.

Duration of assessment

Please note that the duration of assessment indicator tables (as printed in the *Lexcel Assessment Guide*, 3rd edition) have been changed following a consultation exercise conducted by the Lexcel Office in 2004. The revised guidelines are at Appendix A.

Introduction

It is perhaps most important to look at the context of the following references used throughout the standard. These terms have been used with the intention of enabling requirements to be interpreted as appropriate to the many and different types of practice.

- Policy – the standard makes it clear where a policy is required to be written and where there are exceptions that can be obtained by interview evidence.
- Process – this is a new element to the standard that reflects the conscious move away from documented procedures. On assessment, the assessor will check for activities in relation to the specific requirements requiring processes. A process can therefore be something that is happening within the practice that is not necessarily underpinned by writing.
- Procedure – where a requirement specifies a procedure, it must always be written.
- Plan – in most cases a plan must be written. However in certain circumstances an assessor may accept different evidence.

Please refer to Matthew Moore's article, *'Should' and 'Must': Optional and mandatory components of Lexcel 2004* (Lexcel Link, Issue 2 October 2004), for further guidance in relation to the use of these terms throughout the standard.

Section 1 Structures and Policies

This section contains the majority of new requirements.

The Law Society's Code of Conduct (2004)

The Law Society is in the course of introducing a new Code of Conduct which will replace the Guide to the Professional Conduct of Solicitors (see www.lawsociety.org.uk/professional/conduct/consultations/view=article.law?DOCUMENTID=208016). The new code was passed by the Council of the Law Society in September 2004 and is currently undergoing the process of review by government and the judiciary under Schedule 4 to the Courts and Legal Services Act 1990. Although it is expected that the new code will not be in force until early 2006, it is recommended that practices refer to draft Rule 5 (Business Management in England and Wales), Rule 12 (Framework of practice), Rule 13 (In-house practice), and Rule 14 (Incorporated practice), for assistance in complying with Lexcel requirements 1.1, 1.2, and 1.3.

1.1 Practices will have documentation setting out the legal framework under which they operate.

For private practice this could be the partnership deed or simply the terms of reference. For local authority legal departments, this would be where they fall in the overall structure of the organisation, for example the council is formed by charter.

1.2 Consideration should be given to the most appropriate business structure and this should be kept under review as part of the business planning process (section 2).

The purpose of this requirement is for the assessor to identify whether the practice has discussed and given proper consideration to business organisation or structure, e.g. considered changing to a corporate structure.

An information booklet on incorporating your practice as a company or as an LLP is available from the Professional Ethics Department of the Law Society on 0870 606 2577.

The Lexcel Office will provide future updates on this area following the recent publication of the Clementi Report.

1.3 Practices will have a risk management strategy or framework.

The most practical way to approach 1.3 is to interpret it as requiring a risk management *policy*. This is the overall policy objective for the practice and complemented by the procedures for operational risk management in 6.7 and 6.8.

1.4 Practices will have a written quality policy. This is a high level document setting out the organisation's commitment to quality and overall policy. Practices will also have documented procedures as set out in this standard, which will be distributed and published throughout the practice showing:

- a: The role that the quality system plays in the overall strategy of the practice.**
- b: Who has responsibility for the management of the quality system.**

The documented procedures referred to in 1.4 are essentially those in 7.1 focusing on client care. This requirement is aimed at tackling "tokenism" in relation to the practice's adoption of a quality management system.

1.6 There must be a review of the operation of the quality system at least annually and a process for people within the practice to suggest improvements to the system. The review must show the part that the quality system is intended to play in the future strategy of the practice over the next 12 months at least.

Requirements 1.4, 1.5, and 1.6, focus on management commitment to quality. Assessment interviews may include questioning partners on why they have implemented the Lexcel standard within their practice.

1.7 Practices will document procedures on non-discrimination, and have regard to guidance from the Law Society on non-discrimination in accepting instructions from clients, the use of experts and counsel and the provision of services to clients.

1.8 Practices will document procedures on equality and diversity including recruitment and employment procedures and have regard to guidance on equality and diversity issued by the Law Society from time to time.

Requirements 1.7 and 1.8 concentrate on anti-discrimination and equality of opportunity. Please note that assessors will now look to see that practices have adopted the necessary policies *and* whether the policies are in effective operation. In the incidence of an apparent serious breach of the requisite policies the assessor will raise his or her concerns with the management representative (please refer to the *Assessment Guide* for the special procedure in such cases).

Equal opportunities is about providing opportunities and removing barriers that affect particular groups. Legislation is increasingly protecting rights of people in groups and society. Equal opportunities normally covers six strands of anti-discrimination including age, disability, gender, religious belief, race and sexual orientation.

Diversity is a broader concept that builds upon the progress made through equal opportunities. Everyone is different and diversity is about recognising and valuing the differences each of us brings to work.

Equal opportunities and diversity work together by addressing the inequalities and barriers faced by people in under-represented groups and by valuing, learning and benefiting from the diverse cultures in society and our staff.

Solicitors' Anti-Discrimination Rule 2004

A new Anti-Discrimination Rule came into effect on 1 September. Its main purposes are to ensure that the Rule continues to reflect current legislation and to clarify various issues regarding enforcement and application.

Under the new Rule, the duty not to discriminate has been extended so that the Rule includes religion or belief. A finding of discrimination by a tribunal or court is now treated by the Law Society as prima facie evidence that the new rule has been breached. Comprehensive guidance to the rule has been published.

The following downloadable documents are available at www.lawsociety.org.uk/professional/conduct/guideonline.law:

Solicitors' Anti-Discrimination Rule 2004
Guidance on Solicitors' Anti-Discrimination Rule 2004
Model Anti-Discrimination Policy

In accordance with the Guidance on Solicitors' Anti-Discrimination Rule 2004, in order to comply with Lexcel requirements 1.7 and 1.8, "Firms may adopt their own policy and need not adopt, verbatim, the Law Society's model policy. However, if they do so then that policy must cover, as a minimum, all of those matters referred to in the model and should contain provisions to ensure compliance with this rule" (Rules 3 & 4 – Policy, para 29).

Delivering diversity

As part of the Law Society's efforts to make the profession more aware of equality and diversity issues, and to support the recently issued Solicitors' Anti-discrimination Rule 2004, a CD-ROM has been produced covering the law, business practices, training and general diversity issues.

The CD-ROM has been sent to all firms and in-house legal departments.

- 1.9 Practices will have documented procedures to ensure compliance with money laundering legislation. The documented procedures should cover:**
- a: The appointment of a 'Nominated Officer' usually referred to as a Money Laundering Reporting Officer (MLRO).**
 - b: Reporting of suspicious circumstances within the practice and by the MLRO to the authorities.**
 - c: Identification checking.**
 - d: Partner and staff training in anti-money laundering awareness.**
 - e: The proper maintenance of records.**
- Any exemptions to these requirements must be stated in the practice's documented procedures.**

When assessing against this requirement, assessors will look for evidence that the practice is complying with the scope of their money laundering responsibilities. If the practice is within the regulated sector, the assessor will be looking to see that the practice has a reporting officer; that people have been trained, that i.d. checks are being carried out; and that the practice has got procedures in place to maintain proper records and report suspicious circumstances.

Please note that the assessor will have gained an understanding, as part of Lexcel training, on the Money Laundering Regulations 2003, but the purpose of their role is to assess compliance in terms of this Lexcel requirement and not the Regulations.

The impact of the anti-money laundering requirements on solicitors in private practice and in-house solicitors (including solicitors in local government) is quite different. The position is that at the current moment in time in-house solicitors are not obliged to comply with the Money Laundering Regulations because of Regulation 2(2), which states "acting in the provision of legal services by a body corporate or firm". Therefore the view is taken that because in-house solicitors do not work for organisations whose sole purpose is to provide legal services they do not have to comply. However the Proceeds of Crime Act 2002 is different as this applies to all individuals and organisations in the UK. This is the piece of legislation that creates the reporting obligation, so if solicitors have knowledge or suspicion of money laundering in connection with the business that they are involved with they will need to report, subject to legal professional privilege.

The position in relation to Lexcel requirement 1.9 can be summarised thus:
Practices will have documented procedures to ensure compliance with the relevant legal anti money laundering requirements. Solicitors may have reference to the law society's money laundering guidance, www.lawsociety.org.uk, or to Professional Ethics: 0870 606 2577.

1.10 Practices providing services to clients in relation to property transactions will have documented procedures in relation to the avoidance of involvement in mortgage fraud.

Please note that the *Example of minor non-compliances* (page 36, *Assessment Guide*) is not intended to be interpreted that Lexcel assessors will assess procedures against the requirements of the *Council of Mortgage Lenders Handbook*. As with all Lexcel requirements, the assessor will look to see that the procedures are in place where applicable.

1.11 Practices will have a documented policy in relation to data protection compliance issues.

Please note that issue 2 of *Lexcel Guidance*, November 2004, highlighted two errata in relation to the publication of the Lexcel Standard 2004; one is in relation to this requirement and should read as above (rather than requiring a documented *procedure*).

The Law Society's Data Protection Policy can be used as a template for practices to develop their own policy (see Appendix B or consult www.lawsociety.org.uk).

Section 2 Strategy, the Provision of Services and Marketing

- 2.1 Practices will develop and maintain a marketing and a business plan.
- 2.2 Practices will document the services they wish to offer, the client groups to be served, how services are to be provided (including any special features) and the way in which services are designed to meet client needs.
- 2.3 The documents, required by section 2.1 must be reviewed every six months and the review must be documented. The services and marketing plan or documentation required by section 2.2 must be produced or reviewed at least annually and must be current at the time of any assessment.

This section deals with the need for a business plan and for due consideration to be given to marketing. It is acknowledged by the Lexcel Office that 2.1, 2.2, and 2.3, have led to some confusion in terms of the exact requirements and the frequency of reviews. The information given below therefore seeks to clarify what exactly needs to be done to comply with the requirements of this section.

Frequency of review

Business plan – every 6 months
Marketing plan – at least annually
Services plan – at least annually

The assessor will look for evidence that the practice has a business plan and has given due consideration to marketing. Section 2 envisages that some practices may wish to combine the business plan and marketing plan or may wish to produce two separate documents.

It is important to note that a business plan should consist of:

- a: Analysis of the factors, both internal to the practice and externally, that are relevant to the future development of the practice.
- b: Key objectives for the forthcoming 12 months at least from the date of the document or review of any such document to provide a background against which the practice may measure its performance.
- c: Some outline or detailed objectives covering a further two years at least which evidence a consideration of the factors relevant to the future of the practice.
- d: For items (b) and (c) above a finance plan, evidencing due consideration of the overall financial implications of the strategy or strategies to be adopted within the practice and setting some financial goals or objectives if not appearing elsewhere in the business plan.

However marketing is dealt with, the documentation should cover:

- a: Areas of work that the practice wishes to develop, expand, reduce or cease to provide.
- b: The benefits that the practice hopes to achieve from its marketing or promotional activity.
- c: Any promotional methods that will be employed and responsibility for them.
- d: A budget for promotional activities.

Please note: lists (such as those above) that are contained within the *Assessment Guide* and do not form part of the actual standard are optional and to be used for illustrative purposes. However an assessor would raise questions if some of the items contained in

such a list do not appear to have been considered and addressed if appropriate to the operation of the practice.

Section 3 Financial Management

3.2 Practices will be able to provide documentary evidence of their financial management processes, including:

- a: Annual budget (including, where appropriate, any capital expenditure proposed).
- b: Variance analysis conducted at least quarterly of income and expenditure against budgets.
- c: Annual profit and loss or income and expenditure accounts (certificated or audited accounts).
- d: Annual balance sheet.
- e: Annual cash or funds flow forecast.
- f: Quarterly variance analysis at least of cashflow.

Financial management data is best evidenced by showing all appropriate data or paperwork to assessors, but practices may decline to do so if they wish. In such cases the assessor will consider other evidence that is available, including correspondence from the practice's auditors and interviews with the partners and/or managers.

In reference to 3.2e, cash flow is the term used in private practice and funds flow is intended to be the equivalent term used for local authorities.

3.3 Practices will have a time recording process which enables the accurate measurement of time spent on matters for billing purposes and/or management analysis of the cost effectiveness of work and the efficiency of the practice.

The "and/or" part of this requirement has caused confusion as to whether time recording is mandatory, even if just for the purpose of management analysis: time recording is *not* mandatory where billing does not depend on it and therefore it is not mandatory for management analysis to be undertaken where time recording does not take place. Please note that topics such as this will form the subject of ongoing "Best Practice" features in *Lexcel Link*.

Section 4 Facilities and IT

LMS (the Law Society's Law Management Section) will shortly be launching the *IT Policy Toolkit*. This will feature protocols on the use of Internet technologies, including the use of email, management of data, and disaster recovery and business continuity. See www.lms.lawsociety.org.uk for further details.

4.2 Practices will conduct a documented review of health and safety issues at least annually. They must show that it has received due consideration by top management and implementation has been acted upon or is planned, as appropriate.

The important point to pay attention to in regard to this requirement is that health and safety issues need senior management awareness. The *Assessment Guide* also references the following points that should be included in the review of health and safety issues, where relevant:

- Equipment.
- Safe handling and use of substances.
- Information, instruction and supervision on health and safety issues.
- Any training required.
- Accidents, first aid and work-related ill-health.
- Monitoring of conditions and systems of work.
- Emergency procedures, fire and evacuation of premises.

4.3 There should be a business continuity plan envisaging the nature of catastrophic events that could beset the practice and the contingency plans that should be put into effect should they become necessary.

This requirement is optional. Please note that the *Example of major non-compliances* (page 49, *Assessment Guide*) is incorrect as it states that it is a major non-compliance if there is no business continuity plan in existence.

4.4 Practices will have a plan for IT use setting out the use of IT facilities within the practice and any planned changes. The IT plan should cover:

- a: Responsibility for IT purchasing, installation, maintenance, support and training.
- b: The current and planned applications within the practice of IT.
- c: A data protection compliance statement in relation to staff, clients and others and registration with the Information Commissioner.
- d: Compliance with all appropriate regulations and requirements.
- e: User safety, see also 4.2 above.
- f: Appropriate use of e-mail and attachments, both externally and internally, including storage of messages and the implications of not observing such procedures.
- g: Computer data and system back up, to the extent not covered in any disaster recovery plan.

The IT plan must address at least a period of the current or next 12 months and may form part of the practice's overall strategy documentation, the office manual, or a separate document.

See www.lawsociety.org.uk/professional/conduct/guidance.law for the Law Society's view on topics such as electronic storage, as well as guidance in relation to the Data Protection Act 1998, and an example e-mail policy.

For good practice guidance on IT and e-commerce, see www.lawsociety.org.uk/productsandservices/services/usingtechnology/goodpractice.law.

Please note that a "disaster recovery plan" is not an additional requirement for 4.4g. This is intended to refer to the business continuity plan in 4.3.

However it is acknowledged that "disaster recovery" is the correct term relating specifically to IT in this context. Best practice encourages practices to include a disaster recovery plan as a subset of the business continuity plan.

4.6 Practices will maintain an office manual collating information on office practice, which must be available to all members of the practice. Practices will document their arrangements to:

- a: Note each page with the date and/or issue.
- b: Review the manual at least annually.
- c: Update the manual and record the date of amendments.

A practice which satisfies this requirement will have compiled an Office Manual available to all as a guide to office practice and procedures. Precedents for office forms are contained in the Law Society's Lexcel Office Procedures Manual. This document is a 'template from which solicitors can prepare a manual for their firm'.

The Office Manual may be a single document, or a collection of documents, which together describe office procedures. The practice should be able to demonstrate clearly what constitutes its Office Manual. IT does not have to be in paper format. IT may be accessed through a computer network.

In some practices all principals and staff may have a copy of the Manual; in others there may be fewer copies located at various points within the practice. The important point is that everyone in the practice has ready access to a copy of the Manual.

Office Manuals should be kept up to date and contain processes and procedures, which reflect actual procedures. There should be some form of index within the Manual so that information is easy to locate.

Section 5 People Management

LMS (the Law Society's Law Management Section) will be launching the new *HR Toolkit* in April 2005. This replaces the *Appraisal Toolkit* and will feature a series of checklists, protocols, and templates which will particularly assist practices in meeting people management requirements for the first time. See www.lms.lawsociety.org.uk for further details.

5.1 Practices will have a plan for the recruitment, development and welfare of their personnel, including:

- a: Likely recruitment needs, whether for the practice as a whole, its departments or offices, which may form part of the practice's overall business plan or departmental or other operational plans.**
- b: Training and development.**
- c: Welfare and entitlements.**

As per the introductory guidance on the four "P's" (policies, processes, procedures, and plans) referred to throughout the Standard, it may not always be necessary for there to be a written recruitment plan.

Requirement 5.1c should be interpreted as any provisions made for staff welfare, such as bereavement leave or study leave, as well as pension provision and other financial benefits that can usefully be identified. Such issues would probably be dealt with in office procedures or job documentation.

Additionally the practice may consider developing its approach to its employees including, for example, how people can expect to be treated. The concept of "welfare" may be developed by creating a healthy workplace, not just in terms of health and safety, but by considering provision of counselling or dealing with stress, work-life balance etc.

5.2 Practices will list the tasks to be undertaken by all personnel within the practice – including partners – and document the skills, knowledge and experience required for individuals to fulfil their role satisfactorily, usually in the form of a person specification and job description.

A person specification details the essential and required/desired skills, knowledge, and experience necessary for a particular role or post. A job description details the tasks and responsibilities of the position. It is commonplace for the person specification and job description to be contained within the same document.

- 5.3 Practices will have procedures to deal effectively with recruitment into the practice, including:**
- a: The identification of vacancies.**
 - b: The drafting of consequential job documentation, usually in the form of a job description.**
 - c: Methods of attracting candidates and applicants.**
 - d: Selection methods used.**
 - e: Storage of interview notes.**
 - f: Provision of information by way of feedback to unsuccessful candidates.**
 - g: Any use of medical examination and/or references.**
 - h: Confirmation of job offers.**
 - i: Maintenance of communication during the pre-joining period and starting instructions.**

Written procedures are required to satisfy this requirement. However a sole practitioner practising without any staff might only need to document procedures for recruitment, development, and welfare, if they intend to recruit any new staff and should do so before any recruitment takes place. Any plans for recruitment or otherwise would be stated in the business plan.

- 5.5 The induction process must occur within a reasonable period of time of taking up the role.**

The question of what is a reasonable time period is best tested on the assessment itself by interviewing a new employee within the practice.

- 5.8 Practices will ensure that appropriate training is provided to personnel within the practice in accordance with its policy on training and development. Training may be arranged on an in-house or external basis and may be on-line or through more traditional means. Where appropriate the training should be recognised for CPD purposes under the scheme operated by the Law Society of England and Wales or other professional body or bodies.**

Please note that the following points, contained within the *Lexcel Assessment Guide* (page 58), are mandatory in order to comply with this requirement and that assessors will seek evidence that:

- a: Training needs are being assessed in an appropriate manner.**
- b: Agreed training needs are being provided for.**
- c: The effectiveness of training activity is monitored, and that unmet needs are addressed.**
- d: Management and IT skills are being considered as well as technical and legal issues.**
- e: Appropriate training records are maintained.**

Section 6 Supervision and Operational Risk Management

- 6.3 Practices will have processes to ensure that supervision of all staff, both legal and support staff, is effective. Issues which should receive consideration may include:**
- a: Checks on incoming and outgoing post, including e-mails and faxes.**
 - b: Departmental, team and office meetings and communication structures.**
 - c: Reviews of matter print-outs in order to ensure good financial controls and the appropriate allocation of workloads.**
 - d: The exercise of devolved powers in publicly funded work.**

Requirement 6.3 specifies that it is mandatory for practices to have supervision processes. Parts a-d of this requirement are again optional clauses that should be considered and incorporated within the practice where appropriate.

Please note that the *Example of major non-compliances* (pages 61 & 62, *Assessment Guide*) for requirements 6.3 & 6.4 have been attributed the wrong way round.

- 6.6 Practices will have procedures for regular, independent file reviews, of either the management of the file or its substantive legal content, or both. The number and frequency of such reviews will be documented. There is no requirement that designated supervisors should conduct all such reviews in person, but they will need to show that they control or monitor the process and that the process is effective.**

In relation to file reviews, practices will have procedures to ensure that:

- a: A record of the file review is kept on the matter file and centrally, whether for the practice or office as a whole or by team or department.**
- b: Any corrective action which is identified in a file review must be actioned within 28 days and verified by the reviewer.**
- c: There is a review at least annually of the data generated by file reviews, which will contribute to the review of risk assessment data (section 6.7f).**

The term 'verified by the reviewer' contained within sub-section b of this requirement is intended to mean that the file review is subsequently signed off by the reviewer to indicate that the corrective action has been correctly carried out. This verification is really to ensure that any corrective action is closed out.

Section 7 Client Care

Look at this section in conjunction with the Solicitors' Costs Information and Client Care Code 1999.

- 7.1 Practices will have a documented policy for client care, which will include:**
- a: The practice's commitment to provide services to clients in an appropriate manner.**
 - b: Procedures to ensure compliance with Practice Rule 15 and its accompanying code in relation to client care and costs information.**

The *Assessment Guide* (page 69) lists some additional issues that should be addressed when documenting a policy for client care, but are again illustrative for the purpose of this requirement:

- Responsibility for client care.

- General approach of the firm.
- Actions that will be taken to test and improve client care.
- Specific procedures as required by the other provisions of this section.

7.3 Practices will operate a written complaints handling procedure that:

- a: Is made readily available and accessible to clients when it is apparent that they may wish to have recourse to it.**
- b: Defines what the practice regards as a complaint and sets out how to identify and respond to complaints.**
- c: Records and reports centrally all complaints received from clients.**
- d: Identifies the cause of any problem of which the client has complained, offering any appropriate redress, and correcting any unsatisfactory procedures.**

Practices must conduct reviews at least annually of complaints data and trends, such review(s) forming part of the review of risk assessment under 6.7f above.

The annual review of complaints data and trends does need to be documented. This requirement is also referenced in 6.7f. This documentation is best dealt with in one annual exercise, although practices may find it helpful to review complaints data and trends more regularly.

7.4 Practices must conduct an annual review to check that the practice's commitment to provide quality services is being met in the perception of clients.

The *Assessment Guide* (page 72) states that 'the findings and outcome should be documented'. This is not a mandatory part of this requirement, but rather a recommendation of best practice so that the results (most commonly client feedback data) can feed into the review of risk assessment under 6.7 and the review of the quality system under 1.6.

Please note that the *Example of minor non-compliance* (page 72, *Assessment Guide*) is incorrect as it is not justifiable in terms of the actual requirement

Section 8 File and Case Management

Whilst the vast majority of requirements in this section are not new (they existed for the most part in Section F of the Lexcel Standard 2000) this section continues to give rise to the majority of non-compliances on assessment. A new column, "Common non-compliances", will feature regularly in future issues of *Lexcel Link*.

Guidance on Rule 15 compliance for initial free/fixed fee interviews

This section of guidance relates to the application of Rule 15 in the following 2 scenarios:

1. Where there is a "free" half hour interview
2. Where there is a fixed fee for the first 30 minutes (of a token amount, say £15)

And the need for (Lexcel) compliance procedures to be followed in each case, specifically:

- At what stage does the person become a client;
- Need for a conflict check;
- Information on the basis of charge (presumably agreed by merit of the initiative);
- Information on a costs estimate;
- Need for money laundering ID checks etc;
- Requirement to confirm in writing the instruction, advice, action;
- Need to inform person of the status of person acting, supervising and complaints;
- Requirement for a risk assessment;
- Need to keep a paper record – attendance notes etc;
- Closing procedures.

This is a very difficult area to advise on, because some interviews may not result in there being a retainer, whereas in others there will be. It is tempting to say that the preliminary interview is just a canter round the high level issues, and that the retainer begins when the client instructs the solicitor to advise formally, but there are a dozen examples of problems arising with this approach. For example, would the solicitor be guilty of misconduct if they gave "high level advice" despite knowing that they were already acting on the other side? Or if the solicitor later accepted instructions from the other side and used info gathered in the preliminary interview? Obviously, yes and yes.

This guidance therefore attempts to balance the requirements of compliance procedures with, what ultimately, has to be a practical approach to these matters.

- It is perhaps wise to treat the solicitor/client relationship as established as soon as the solicitor gives advice, or possibly (at least for issues of conflict and confidentiality) as soon as the client tells the solicitor what their "problem" is.

One approach is to treat the free half hour interview as diagnostic and exploratory and not for the giving of advice. Its object is therefore to establish what the potential client's problem is, whether the firm can deal with it and whether it can be funded, at least in principle.

- The prospective client may have given only limited information ahead of the meeting or may have gone into some detail which would enable the firm to do a check of sorts. Generally, it's not realistic for the solicitor to put the meeting on hold to enable the checks to be made. However, if the prospective client says something which alerts the solicitor to a possible conflict - for example, the opponent's name may ring a bell or the solicitor may recall a colleague talking about a case with the same facts – then it is advisable to carry out a check there and then. Otherwise the checks can be done as soon as possible after the meeting.

In practice, a few well aimed questions might help identify whether the firm is acting already in the matter. The solicitor should record that these questions were asked, along with a note of information given. This would be very important, for example, in domestic violence cases where both sides can be seeking assistance at the same time from a small pool of firms.

- If free advice is offered and given or if there is a nominal charge for advice, then it becomes more complicated - and there is a strong argument that the full client care requirements come into operation, which can then be out of proportion to the circumstances. Advice, even if free or at a nominal charge, is still advice to a client and it is very difficult to "edit" the client care procedure, especially the conflict check and confirmation about the costs position.
- If payment is made the solicitor should send a receipted bill.

- Money laundering checks apply regardless of whether it is fixed fee or free. But as clients probably won't turn up at the initial interview with the appropriate ID, the solicitor may be able to take a practical approach and ask for the production of ID if the solicitor is to take the matter forward. However it is wise to, so far as possible, to ensure that the client brings ID along to the interview.
- If some advice has been given in a free attendance, or there has been a nominal charge, then there has to be some written record of that advice. If the initial advice concludes the matter, and no payment is made, there is perhaps no real point in sending a retrospective client care letter to the client, but the solicitor should still keep a note of what was discussed for their own protection.
- At the start of that preliminary meeting the solicitor should make it clear on what basis that meeting is taking place (free or fixed fee), their status, and their supervisor.
- Keeping written records of the interviews is still necessary regardless of whether it is either fixed fee or free.
- The essence of 6.8 of the Lexcel Standard 2004 is that risk needs to be considered before, during and after the work is performed for the client. For Lexcel compliance an initial risk assessment should be based on the instructions received, but it is recommended that risk is considered for initial free/fixed fee interviews.

A practice undertaking initial free/fixed fee interviews should probably consider adopting a pre-prepared pro forma available to record compliance procedures and any advice given, and possibly to give a copy to the client. It is clear that Rule 15 compliance should not be treated lightly by solicitors in these scenarios.

Where to find Ethics Guidance Documents

As many may be aware, the Law Society's Professional Ethics Department produces a wide range of guidance documents dealing with topics including Setting Up in Practice; Solicitors Practice Rules; and Becoming a Registered European Lawyer. In total there are over thirty separate guidance documents.

To access the guides please go to www.lawsociety.org.uk/professional/conduct.law where you will find them arranged by subject area and alphabetically.

Lexcel queries

We hope that this document has helped to provide further guidance and clarification, as well some useful points of reference for the Lexcel Standard 2004. However if you require further assistance with a query on the standard, please contact the Lexcel Office on 020 5316 5776.



Appendix A: Revised guidelines on duration of assessments and interview sample sizes

These guidelines replace those published in the *Lexcel Assessment Guide*, 3rd edition, and *Lexcel: Helping Practices to Improve Profitability*.

Duration of assessment

The total likely duration of assessment can be ascertained by adding the number obtained from Table 1 to the number obtained from Table 2 below. It is very unlikely that the length of assessments can be reduced at the bottom end of the scale. All of the time estimates given below are guidelines only and are not prescriptive.

Please note that the duration for AMV's (annual maintenance visits) is approximately half that of an initial assessment. In order to maintain the duration guidelines for AMV's, the Interview Sample Size Guidelines will be approximately half the percentage stated in Table 3 below. Please note, the case file sample (Table 4) for an AMV will be reflective of the reduced interview sample.

Table 1: Duration indicator – by number of fee-earners

Fee-earners in office	Person days: main office	Additional person days: branch offices
1–5	1	0.5
6–10	1.5	0.5
11–20	2	1
21–30	2.5	1
31–40	3	1.5
41–50	3.5	2
50+	4	3

Table 2: Duration indicator – by number of support staff

Support staff in office	Person days: main office	Additional person days: branch offices
1–30	0.5	0.5
31+	1	1

Table 3: Interview sample size guidelines

Total number of fee-earners (inc. partners and principals) and support staff in the practice	Sample (%)	
	Fee earners	Support
1–5	60	20
6–15	48	20
16–25	44	16
26–50	36	16
51–75	30	13
76–100	25	11
101–125	20	9
126–500	14	6
501–1000	14	6

To ascertain the interview sample size, place the total number of staff within a banding in column 1 of Table 3. Columns 2 and 3 then identify the percentage of the total staff to be interviewed, by fee earner and support staff.

For example:

Firm A: 4 partners, 16 fee earners and 17 support staff = 37 staff (therefore within the “26-50” bracket of column 1)

Interview Sample Fee Earners: 0.36 (fee earner %) \times 37 (total number of staff) = 13 fee earners

Interview Sample Support Staff: 0.16 (support %) \times 37 (total number of staff) = 6 support staff

Table 4: Case file sample table

Fee earners in sample	Case file sample range
1	5 +
2-5	10-20
6-10	20-40
11-20	40-60
21-30	60-90
31-50	90-110
51-80	110-140
81-100	140-150