

Solicitors' Professional Indemnity Critical Management Controls

This form contains electronically enabled form fields, so you can easily complete it online and submit it using the button at the end of the form. Or, if you prefer, you can print this form and complete it by hand.

The questions in this form apply to all Firms including Sole Practitioners, where we use the term Risk Manager or Supervisor, this is interchangeable with Sole Practitioner. **You do not need to complete this form if you currently have Lexcel accreditation.** Please answer "Yes" if you currently meet a requirement, "WT" if you are working towards meeting a requirement and "No" if you do not meet the requirement. For your assistance, guidance notes are shown in dark grey.

Firm name:

(a) Is one or more of the Partners, or the Sole Practitioner, qualified to supervise' (including self-supervision for Sole Practitioners) as defined by the SRA's/LSC's supervision qualification requirements?

N/A YES WT NO

Guidance: The SRA's qualification is that the person must have been entitled to practice as a lawyer for 36 months within the last 10 years and have completed 12 hours of management training. The LSC's requirements vary depending upon the Category of Work performed. Suitability for the role in terms of fitness and propriety should also be considered as this will also be checked independently by the SRA for the COLP, COFA and other managers and owners of the Firm.

b (i) Does the Firm have a risk management strategy and:

- Is there a structure for reporting risks either within or outside the life cycle of a matter;
- Has it nominated a person responsible for the implementation and operation of this strategy?

N/A YES WT NO

Guidance: Larger organisations should appoint a Risk Manager who is responsible for implementing the Firm's risk management strategy. Sole Practitioners are responsible for risk management in their Firms.

b (ii) Has the Firm established what services it will or will not offer at both a generic and detailed level, and earning and support staff?

N/A YES WT NO

Guidance: Generic means an overall work category, detailed means specific types of work within that category. For example, you might 'generally' offer Personal Injury work but, at a specific level, may exclude Road Traffic Accident work. The Firm's procedures for signposting or referral to other sources of help should be followed if work is refused on this basis.

b (iii) Prior to acceptance, are new matters subjected to a risk review by the Sole Practitioner, Partner or Supervisor that will establish if the matter is within the Firm's capability and capacity, and if the matter has unusual or higher risk factors than normal?

N/A YES WT NO

Guidance: High/unusual risk factors should be defined for each work-type. These might include, for example, unusually high transaction values, tight limitation/key dates, inward transfers from other Firms, complexity and/or a higher number of parties involved than normal.

b (iv) If a matter that displays unusual/high risk factors is accepted, are additional control measures put in place prior to the commencement of work?

N/A YES WT NO

Guidance: Whereas this might be a matter only of closer supervision or taking greater care, a case plan should be produced that highlights any additional precautions to be taken.

b (v) Are all matters proactively monitored during their progress to determine if the case's risk profile has changed?

N/A YES WT NO

Guidance: Whereas monitoring should be inherent within the Firm's case management processes, the case plan should be reviewed in the event that a change in the risk profile is identified.

b (vi) At the end of a matter, is a concluding risk review undertaken to test initial assumptions of risk, a concluding checklist completed and passed to the nominated Risk or Quality Partner, with whom any new control measures should be devised where appropriate?

N/A YES WT NO

Guidance: This review should consider if the client's objectives were achieved, if there has been a complaint or grounds for a complaint and, if so, if a claim is likely. A report by the COLP to the SRA might also be appropriate so this too should be considered in all cases.

c (i) Is there a trained and competent nominated person and an appointed deputy with overall responsibility for the prevention of financial crime?

N/A YES WT NO

Guidance: Previously this person most probably would have been referred to as the Money Laundering Reporting Officer (MLRO). A deputy should also be considered for when the Nominated Officer is absent. In the case of a Sole Practitioner, this could be a competent person available within the Firm or a locum.

c (ii) Does the Firm have Customer Due Diligence procedures that establish the client's identity, any beneficial owner and sources of funds (as appropriate) in accordance with the latest legislative requirements and authoritative guidance before any critical points in the transaction, and are the proofs of identity checks kept on file?

N/A YES WT NO

Guidance: Typically, proofs of identity will include copies of passports, driving licences and utility bills. CDD procedures should be risk based in accordance with money laundering regulations. Specific controls should be defined for reduced, normal and enhanced CDD. The Law Society's latest guidance should be readily available within the Firm and followed.

c (iii) Does the Firm re-run Customer Due Diligence checks on repeat business clients by checking current proofs of identity against those already held on file?

N/A YES WT NO

You should only answer N/A if you do not operate a Client Account.

c (iv) If the Firm provides services to clients in relation to property transactions, do you have procedures for the avoidance of mortgage fraud, which includes:

- Nominating a person responsible for these procedures;
- The provision of training;
- Undertaking a documented annual review of these procedures?

N/A YES WT NO

You should only answer N/A if you do not provide property transaction services.

c (v) If the Firm undertakes property transactions, does it have documented procedures for reporting matters of concern to lenders?

N/A YES WT NO

You should only answer N/A if you do not undertake property transactions.

c (vi) Has the Firm established a cash limit above which it will not accept cash payments?

N/A YES WT NO

You should only answer N/A if you do not accept cash payments for any transactions.

(d) Does the Firm have Accountants' Reports produced for any Client Account(s) that the Firm might operate?

N/A YES WT NO

Guidance: Whilst traditional partnerships without client accounts may not be required to have audited accounts, having these is recognised as best practice. You should only answer N/A if the Firm does not operate a Client Account.

e (i) Has the Firm developed a structure for supervision ensuring that all fee earning staff in all areas of law are included such that a competent service can be assured to your clients?

N/A YES WT NO

Guidance: This must include Partners, fee earners, consultants, para legals and Locums. It is expected that Sole Practitioners will specify how work should be supervised in their absence. It must also take account of Branch Offices, homeworkers and those working offsite such as at Police Stations.

e (ii) Does the Firm have a named Supervisor (or a self-supervising Sole Practitioner) for each category of work it undertakes who is qualified to supervise based on technical competence, experience and ability?

N/A YES WT NO

Guidance: External standards for supervisors might apply (e.g. those set by the regulator or public funded body). One Supervisor may be responsible for more than one area of work and need not be of any particular status.

e (iii) Are supervisors proactive in their responsibility for the allocation of new work or the review of new work soon after receipt?

N/A YES WT NO

Guidance: As a means of ensuring that cases are only accepted, allocated and continued with where there is adequate knowledge, qualifications, expertise, time support (from the advisor, supervisor and any third party, if needed).

e (iv) Does the Firm's regime of supervision (self-supervision for Sole Practitioners) include:

- Checking incoming and outgoing correspondence, including email, faxes and letters;
- Supervisory meetings;
- One-to-one review meetings;
- Allocation of and/or review of new work;
- Reviewing matter lists (to consider workload, progress, variety, technical issues, and financial control);
- Ensuring appropriate alternative funding options are being considered?

N/A YES WT NO

Guidance: Alternative means of funding might include, for example, devolved powers, CFAs, the Legal Services Commission, Trade Unions or insurers.

e (v) Has the Firm established a risk-based process for file reviews covering all personnel and work types, which includes:

- The selection criteria to be used?
- The number and frequency of reviews?
- An established review criteria documented in a review checklist?

N/A YES WT NO

Guidance: Reviews should take account of procedural as well as substantive legal issues.

f (i) At the outset of a matter, does the Firm provide written client care information, unless an alternative form of communication is deemed more acceptable, which includes:

- The name and status of the person dealing with the matter;
- The name of the Supervisor;
- Information on the client's right to cancel;
- The name of the person to whom they should complain in the event of dissatisfaction;
- Information to comply with the provision of services regulations;
- Details of complaint resolution procedures including the role of the LeO in resolving disputes, and the timeframe and details for contacting the LeO; and how to find the professional rules that apply to your business;
- Details of your compulsory Professional Indemnity Insurance including contact details for your insurer(s), the territorial coverage of your insurance and any liability caps that apply (generically or specifically);
- Details of any fee sharing or financial arrangements relevant to their matter and any implications as to your ability to work in the client's best interests as a result;
- Details and relationship with separate business (where relevant);
- Your VAT number;
- Confirmation of the client's instructions?

(in the case of a Sole Practitioner, all roles may be performed by the same person).

N/A YES WT NO

Guidance: If there is a team of people likely to be working on the case, all names and statuses should be advised. The information required for compliance with the Provision of Services Regulations should be provided in a document in which you give a detailed description of the service (such as a client care letter).

f (ii) During the progress of a matter, does the Firm provide written costs update information at least every six months, or more frequently if events dictate, that:

- Highlight any financial risks associated with the case including advice upon adverse costs orders;
- Provide advance warning of fee rate changes to existing work?

N/A YES WT NO

You should only answer N/A if the Firm always quotes fixed fees.

f (iii) Does the Firm provide written information concerning any fee sharing or referral incentives the Firm benefits from and how this will be accounted for?

N/A YES WT NO

Guidance: This might be by payment to the client, offsetting against their bill, or possibly retaining the monies or donating to charity if the amount is made known to the client and they have agreed that the Firm can keep it. Firms should check that, where appropriate, any introducer of claims work is authorised or exempt under the regulatory regime applicable to claims management companies. You should only answer N/A if the Firm does not operate a fee sharing or referral incentive.

f (iv) Is the Sole Practitioner responsible, or has the Firm nominated a Partner to be responsible, for the compilation and effective use of the complaints handling procedure, including:

- Provision of training for those responsible for handling and resolving complaints;
- Reviewing and analysing the complaints register;
- Deciding upon remedial action;
- Reporting claims and potential claims to insurers;
- Offering redress that is prompt and proportionate;
- Implementing preventative actions to stop complaints reoccurring?

N/A YES WT NO

Guidance: Guidance: In larger Firms, it is acceptable to have a Manager or other senior person to deal with complaints in the first instance, providing they report (and escalate matters as appropriate), to the Partner with ultimate responsibility for monitoring and resolving complaints. Training should be provided (as relevant) on how to identify, handle, investigate and communicate on complaints.

g (i) Does the Firm have the means to ensure that the status of any given file, including key dates, risks, undertakings etc., is readily apparent to someone else as well as the fee earner concerned and that the file is kept up-to-date and in an orderly fashion with file transfer notes being made when appropriate?

N/A YES WT NO

Guidance: This might include file summary sheets, case management systems and guidelines for the clip arrangement of files.

g (ii) Does the Firm systematically check for conflicts of interest prior to accepting instructions in relation to conflicts between clients and between clients and the Firm?

N/A YES WT NO

Guidance: This might be a combination of systematic checking the client database for key words on other parties and assets/liabilities involved, adversaries, funders or other stakeholders, and also your Firm's register of interests of the Partners/staff, involvement of gifts/donations, existing knowledge and consultation with other departments, branches, Partners/fee earners via e mail. Database checks will only be as reliable as the data held so it is essential that these details are kept up to date. The latest Law Society guidance on Conflicts should be taken into account alongside that on Confidentiality & Disclosure. Specific training on the subject of conflicts is recommended and is required for Lexcel.

g (iii) Does the Firm ensure that legible attendance notes confirming verbal instructions and/or written client instructions are held on the file, instructions confirmed to the client in writing and that they include:

- Requirements and objectives;
- Issues raised and advice given;
- Options and associated risks;
- Action the Firm will and will not take (i.e. both scope and limitations of the work);
- Timescales to complete action;
- Any action the client should take;
- Any concerns about the clients capacity to understand and co-operate with their matter?

N/A YES WT NO

Guidance: This also applies to free and fixed fee interviews.

g (iv) Has the Firm identified the limitation periods that apply to each type of work it undertakes and does it ensure that key dates are researched and identified as soon as possible at the outset of a matter and noted on the file?

N/A YES WT NO

Guidance: Identifying key dates by work types should be done as part of generic risk assessments.

g (v) Does the Firm note key dates prominently on file and, in addition:

- Enter them into a back-up system, which identifies the client, matter number and activity;
- Inform the client in writing of key dates applicable to their case and any responsibilities they have in helping to achieve these;
- Use countdown dates to remind fee earners of imminent key dates;
- Operate a key date reminder system?

N/A YES WT NO

g (vi) If other parties are introduced during the course of a case, or other factors that might impact on your ability to act in the client's best interests arise, does the Firm undertake further conflict of interest checks?

N/A YES WT NO

Guidance: A record of any such changes and checks should be made on the file including a note of the considerations when deciding whether to continue or cease to act. You should only answer N/A if the work type(s) undertaken by the Firm do not, and are never likely to, involve such changes.

g (vii) Does the Firm ensure that any fee earners (including Sole Practitioners) regularly review their cases for inactivity and respond accordingly?

N/A YES WT NO

g (viii) Does the Firm ensure that clients are kept informed of progress and are given reasons for any delays?

N/A YES WT NO

g (ix) Does the Firm have established and published procedures for the control of undertakings,

- A definition of what an undertaking is;
- The authority required for giving undertakings;
- How undertakings should be worded including the use of SMART objectives;
- Where they should be recorded, i.e. on the case file and in a central register;
- Timescales for confirming oral undertakings in writing and for querying disputed content?

N/A YES WT NO

Guidance: A central register of non routine/litigation undertakings should be used for recording undertakings given. Training is necessary to ensure that unintentional undertakings are not given and should cover issues such as conditional undertakings, express conditions and holding to order. You should only answer N/A if the Firm only offers services where undertakings are not and never likely to be given.

g (x) Does the Firm have a concluding checklist which ensures that:

- There is evidence of the return and receipt of client and third party property;
- File storage, retrieval and associated costs have been advised to the client in writing;
- The file has been checked for outstanding undertakings, charges and ledger balances?

N/A YES WT NO

Guidance: The object of the concluding checklist is to ensure that claims do not arise from loose ends being left unattended.

g (xi) Does the Firm always give Third Parties written instructions which describe:

- The background to the matter;
- Terms of reference and objectives;
- Specific issues that require research?

N/A YES WT NO

Guidance: Precedent Third Party instructions might be used for this purpose. You may only answer N/A if the Firm never directly instructs a Third Party.

Completed for and on behalf of the Practice:

Partner's Name (please print) Date

Once fully completed and carefully checked please return the form by one of the following methods;

A) Save a copy of the form to your own network then return the form using the submit button below.

B) If you prefer to print and post please collate all forms and return to the address below.

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