

Fifteen Wilkins Kennedy Partners, Managers and Senior Staff are now Lexcel accredited consultants.

The Law Society's stated objectives for Lexcel are:

- To enhance the service given by a practice to its clients;
- To improve the management of the practice;
- To improve the morale and motivation of its staff

In the words of Andrew Holroyd, President of The Law Society (2007- 2008).

"Practice management excellence is a crucial element for any effective law firm or in-house legal department."

Kevin Walmsley looks at the 4p's behind Lexcel – Policy, Process, Procedure, Plan.

A **Policy** is a general approach taken within the practice defining why a particular approach is adopted by the practice.

A **Process** is observable and a description of the sequence of related activities required to achieve desired outputs.

A **Procedure** is a written description of how an activity will incur, setting out the steps that should be followed to complete an activity.

A **Plan** outlines where one wants to be in the future and route maps the way of getting there!

Sounds all quite straightforward?

Perhaps too often professionals and experts are very good at what they do, but give less attention to the running of their business – with the principals or owners working in the business rather than at the business. Solicitors may not be any different – very good at practicing the law and advising their clients, but is the running of their legal practice really what they come into the legal profession to do?

This is where **Lexcel** may be able to help.

Whether it is seeking to obtain full Lexcel accreditation or stepping back and looking at the business of the busy solicitors office and identifying and following through the 4p's, there may be improvements and benefits to be had.

Wilkins Kennedy look to add value in their work with Solicitor clients and WK Law will be looking to bring together the Lexcel expertise to assist clients with positive recommendations to aid Solicitors Practices in practice management.

**If you have any queries please contact Kevin Walmsley or your usual WK contact.**

## Upcoming events

**19 October 2011**  
**– Breakfast seminar**  
**VAT for the legal profession, LLP conversion and Tax and tax planning**  
 (this is a CPD accredited course)

*The Clubhouse, Foxhills*

For a full list of our seminars please see our website [www.wilkinskennedy.com](http://www.wilkinskennedy.com)

**If you are interested in the above seminar or would like any further information please contact us at [wklaw@wilkinskennedy.com](mailto:wklaw@wilkinskennedy.com).**



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## Tax – sometimes it is all in the mind

Tax is normally assessed on the basis of what has happened – and there is often a trail of facts.

In some circumstances, however, a taxpayer is taxed on their state of mind – that is, what their intentions are for the future.

Do you always know what is in your client's mind when you act for them?

### Resident but not ordinarily resident?

A good example of this is foreign individuals who come and work in the UK. Their state of mind, that is their intentions for the future, can often determine how they are taxed. It is therefore important that such clients are advised of the consequences of their intentions – as these can be as important as their actions.

For example, suppose an individual is seconded by their employer to work in the UK for a period of time. The drafting of their employment contract in the UK can critically affect the amount of their salary on which they will be taxed.

It all depends on whether they become "ordinarily resident" in the UK, as well as "resident". If they become UK resident, they will certainly be taxed on their UK earnings – but if they are not UK ordinarily resident, they can escape UK tax on any part of their salary which relates to work done abroad. To achieve this, broadly they must intend to leave the UK within three tax years of arriving in the UK – so this would need to be reflected in their contract of employment.

Even better, if their contract of employment does not exceed two years, they can also claim

for tax purposes a large part of their living expenses in the UK, so this is also important.

### Domiciled abroad?

An individual born overseas and coming to the UK would normally have a domicile of origin abroad, unless they come to the UK with the intention of making it their permanent home, in which case they may acquire a domicile of choice within the UK. There are significant tax advantages if that individual can retain their overseas domicile – for income tax, capital gains tax and inheritance tax purposes. Broadly, for a period of time at least, they can avoid these taxes on income, gains and assets which are kept outside the UK – and sometimes permanently. Tax planning opportunities may abound!

### Evidencing your clients' intentions

The Revenue may sometimes be tempted to believe that a person has changed their intentions since they arrived in the UK, particularly if tax is at stake. It is important therefore that their intentions are recorded from the day they arrive in the UK – if not before. Documents such as contracts of employment, property leases and Wills can be good evidence of the state of mind and intentions of the client. However, if an adviser is not aware of the tax consequences of a client's state of mind, they can easily and unwillingly land them with unnecessary tax liabilities when drafting agreements.

A client is often not aware of the tax consequences of his or her state of mind. Good advice, as always, depends on asking the client the right questions – and not necessarily taking what a client says at face value.

**If you have any queries please contact Roger Williams or your usual WK contact.**



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# Client confidentiality and the SAR

As part of the procedures of a reporting accountant, a sample of client matter files are selected and reviewed when carrying out the annual SAR “review”. Normally, the papers on the files are routine and unexceptional. However, in some circumstances, could such a review lead you, as the solicitor, to breach your duty of client confidentiality?

## The problem

As solicitors, you are uniquely positioned to give privileged advice to clients, and the reporting rules are relaxed during the conduct of litigation. Reporting accountants however, do not have that luxury. If they come across circumstances that give rise to grounds for a suspicious activity report to SOCA, they have to make that report, and would need to do so without telling you so there could be no tipping off.

Clearly, where a file is reviewed that contains material that leads the accountant to necessarily make a suspicious activity report, this could jeopardise ongoing or pending litigation, or may simply cause a lot of unnecessary grief for the client. As an example, you may be acting for a client who deals in computer chips, which are commonly the subject of VAT fraud. There may be notes on file that lead the accountant to have to make a suspicious activity report – and that could land your client with an investigation from HMRC that could be very costly, not only in monetary terms, but also for the distress and inconvenience caused, and in extreme cases could lead to the client going out of business.

In such circumstances, if it became clear that the cause of the problem was as a result of a file review, you could be facing a complaint from the client to the SRA for breach of confidentiality and also a substantial damages claim. Although SOCA say that information given to them is dealt

with confidentially, there are likely to be cases where the suspicious activity report has been made available to the person to whom it relates.

## Possible solutions

Probably, the most practical solution is to maintain a central list of blacklisted files which the Reporting Accountant is refused access to. The list can be reviewed by support staff before any files are presented to the Reporting Accountant for review.

The refusal to provide a file on these grounds is permitted under Rule 45 of the Solicitors Accounts Rules, but is likely to give rise to a qualification of the Accountant’s Report to the SRA.

Alternatively, where a file is selected which is known to contain privileged information, that information could be weeded from the file. An astute Reporting Accountant may become aware that documents are missing from the file and therefore may request them. Your refusal to provide the documents could also lead to qualification of the Accountant’s Report.

The position needs to be handled sensitively and prior to the Reporting Accountant issuing the Accountants Report, you should write to the SRA explaining the reasons for not making the file or information available. Indeed, you may prefer to write to the SRA as soon as the Accountant has requested a blacklisted file or privileged information. This should prevent any undue over-reaction from the SRA.

**If you have any queries please contact Jeremy Newman or your usual WK contact.**



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# What is an Alternative Business Structure?

We have seen the press comment and the hype, and to a certain extent the hysteria about the advent of the new age in the delivery of Law Services, but what does it actually look like?

Firstly, in order to gain an understanding of the impact you need to understand what an Alternative Business Structure is. To boil it down to its basic construction, it is likely to be a limited company in which external investors take a share. Provided that there is a head of legal practice who is a qualified lawyer and a head of finance then the delivery of the law services can be by unqualified and cheaper staff.

We have two points to consider which result from the introduction of Alternative Business Structures:

## 1. External investment

For the first time law firms will be able to attract outside investment through business angels, entrepreneurs and maybe even spouses, with these investors taking a share of the profits. This opens up the possibility to law firms that have struggled in the past to attract capital, to introduce partners from the wider business community, who have greater access to funds.

With this comes the issue of business structure and although not impossible it is very unlikely that any outside investor would be attracted to the partnership model, whether this be in the form of a limited liability partnership or the more conventional unincorporated version.

The big issue with any conversion to a limited company will be the valuation of goodwill, and where solicitors have become used to the idea of not paying to enter a partnership and no receipt on leaving a partnership, this view may need to change. The taxation differential between capital gains tax, which at its lowest level after reliefs could be 10% against the highest marginal income tax rates of 60% or 50%, makes the crystallisation of goodwill a very attractive proposition.

**For “consumers”, it is likely they will find it easier to access basic legal advice in the first instance but then may look for the personal service from a firm of solicitors for more complex matters.**

## 2. Outside competition

This is where most commentary has been directed and the tales of Supermarket Law have abounded. Any research into the offerings by a big conglomerate will generally show that they will look at the packaged law services that can easily be sold as a product. Preparation of Wills is a service which is likely to fall into this category as the majority of people have still failed to make a Will. This market may therefore be concentrated on first.

This approach by new entrants to the market will pose its own challenges for Solicitor practices and steps need to be made in order to counter act the effect that these alternative business structures may have.

For “consumers”, it is likely they will find it easier to access basic legal advice in the first instance but then may look for the personal service from a firm of solicitors for more complex matters.

In summary, no matter what you read there are uncertain times ahead and it is in the interest of every legal practice to identify its strengths and weaknesses and to implement a plan that will see their firm prosper.

**If you have any queries please contact Paul Nixon or your usual WK contact.**

