

What are some of the key changes to the CPMS?

Section		What's different?
1	Structure & Strategy	<p><b>Guidance Note for the Business Continuity Plan now includes the following additional risks to be included:</b></p> <ul style="list-style-type: none"> <li>✓ Hacking, cyber-attacks and data theft or loss</li> <li>✓ Loss of communications or facilities (IT, access to the building).</li> <li>✓ Loss of key personnel and loss or unavailability of key role holders eg MLRO, COLP</li> <li>✓ Pandemic</li> </ul> <p>There is also more information on how to approach the assessment, as follows:</p> <p>“Practices should first identify what the potential risks are: for example, consideration should be given to the practice's physical location and the specific risks associated with that location. Practices should then evaluate those potential risks. Typical evaluation models that practices may use include a SWOT or PESTLE analysis. The business continuity plan should outline the ways the practice reduces, avoids or transfers those risks and identify the key people relevant to its implementation, including a consideration of deputies.</p> <ul style="list-style-type: none"> <li>✓ Sole practitioners will need to address key issues arising out of the risk of their being unavailable to manage their practice: e.g. how work will be progressed, who will act as COLP/COFA/MLRO, how payments will be made.</li> </ul> <p>Resources:</p> <ul style="list-style-type: none"> <li>✓ <a href="http://www.lawsociety.org.uk/advice/practice-notes/business-continuity/">http://www.lawsociety.org.uk/advice/practice-notes/business-continuity/</a></li> <li>✓ <a href="https://www.sra.org.uk/solicitors/guidance/ethics-guidance/responsibilities-of-colps-and-cofas/">https://www.sra.org.uk/solicitors/guidance/ethics-guidance/responsibilities-of-colps-and-cofas/</a></li> </ul>
2	Financial management	<p>2.3 Financial transactions – the guidance now includes:</p> <p>Authorisations should be construed widely. Details of how financial transactions are authorised must be encompassed within the procedures, for example, in respect of authorised signatories, disbursements, cheque requests, bank transfers, client to office and office to client transfers and write off requests.</p> <p>Conveyancing often involves the transfer of large sums of money: a practice may consider requiring an additional layer of authorisation for transfers over a certain threshold.</p>

# New CQS Standards 2022



3	Information Management	<p>3.1 (b) Ensuring that all <b>personnel</b> are kept aware of developments in cybercrime and how they may affect the practice.</p> <p>Guidance Notes: Training for personnel on information security should be appropriate and relevant to the role.</p>
4	People Management	<p>4.1 (c) must include a procedure to <u>evaluate</u> training</p> <p>Guidance Notes: The methods used by practices to deliver training are not specified. Some practices hold regular team mini-briefings, others prefer the informality of supervisor chats, or regular email updates, or will run programmes of online bite-sized trackable learning. Staff often recall more accurately, and act upon, training which is delivered on a “little and often” basis. Not only does that approach help to deliver a consistent message, it may make better use of time and create less disruption.</p>
5	Risk Management	<p>5.7 Practices <b>must</b> have a <b>policy</b> for handling conflicts</p> <p>Guidance Note expanded to include: If acting on both sides of a transaction, practices should be able to clearly demonstrate by reference to written evidence that an effective risk assessment has been carried out, why the practice considers that there is no conflict or significant risk of conflict and that both clients have been advised fully and in writing of the implications involved. If the buyer is obtaining a mortgage and you are also acting for the lender you must notify the lender that you are acting for both buyer and seller and obtain the lender’s approval.</p> <p>Legal Eye have previously produced a Conflicts of Interest Checklist which provides an initial suggested risk assessment</p> <p>5.8 Practices <b>must</b> have a <b>procedure</b> to ensure that files are monitored regularly for inactivity. Guidance Notes add: Where a failure to make expected progress has been identified, clients should be informed promptly in writing with the reason for the failure.</p> <p>NEW 5.9 Practices must have a <b>procedure</b> to provide adequate cover for the work of personnel who are absent. It used to say: Practices must have a procedure to ensure files are regularly monitored and that adequate cover is provided for the work of staff who are absent</p> <p>5.10 Practices <b>must</b> have a <b>procedure</b> for regular, independent file reviews of both the management of the file and the substantive legal content.</p>

Guidance Notes state: In respect of 5.10.c, the requirement is not that the full review must be held on the matter file, but rather that it is apparent from the file that it has been reviewed and where the central record of such review may be found. It is increasingly common to have a central record of file reviews which is in an electronic format. This will be compliant provided that it is apparent from the matter file that it has been subject to a file review and that the outcome of the file review can be easily traced.

5.11 Practices **must** have **procedures** to establish appropriate reporting arrangements to ensure that risk issues are appreciated and addressed.

Guidance Notes state: The risk reporting arrangements should reflect the two-way nature of risk management: risks identified by fee earners on files need to be reported up appropriately to supervisors and managers for guidance and monitoring. Management and monitoring strategies will be identified by supervisors who must then ensure that these strategies are communicated back down to fee earners working on the files.

NEW 5.12 k A **procedure** for ensuring that a documented individual AML risk assessment is present on every file addressing the risks of money laundering specific to that file.

Guidance Notes state: Asking clients about the source of funds is the first step towards compliance but information provided by clients should be supported by relevant documentation. That information and documentation should then be analysed and a decision made and recorded.

REVISED 5.13 rewritten and expanded around Property & Mortgage Fraud to include

(b) A documented and up to date practice risk assessment that identifies the warning signs of fraud and assesses the risk.

(c) A **procedure** to ensure that there is a documented fraud risk assessment on each file demonstrating that consideration has been given to any fraud risks associated with the transaction, the other party and the client.

(d) A **procedure** for dealing with transactions where a significant risk of fraud has been identified, which **must** include how the practice ensures that such transactions are effectively supervised including notifying the **supervisor**.

(e) A **procedure** for enhanced checking of the identity (and retaining full records of such enhanced checking) of the practice's client in transactions where a high risk of fraud is present.

(f) A **procedure** for acting for a buyer where there is a significant risk of fraudulent seller which **must** include how the practice ensures that such transactions are effectively supervised including notifying a **supervisor**.

(g) **Training** on the avoidance of involvement in property and mortgage fraud for all **relevant persons**.

		<p>Guidance Notes state: The policy should set out current typical warning signs of a potential mortgage, property and registration fraud and who to contact if personnel have any concerns. This policy should be kept under regular review as criminals frequently change tactics in an attempt to commit mortgage fraud. Regular communication and training in this area is critical to the success of the policy.</p> <p>REVISED 5.15 expanded section on what needs to be included for SDLT procedures Guidance Notes state: The client should be reminded to inform the practice of any change of circumstance which may affect that calculation. Practices must ensure there is a procedure for verifying the amount of SDLT payable, before exchange of contracts. Where possible, this should involve another experienced individual, other than the fee earner, and the verification should be recorded on the file.</p> <p>REVISED 5.16 on Reporting on Leaseholds to clients Policy – expanded on information to be covered</p> <p>Guidance Notes state: Where the length of the unexpired term may be significant, advice should also be given about the right to enfranchise, the marriage value and the costs associated with the procedure. This ancillary information may be provided in a generic advice document which could also explain the right to acquire the freehold and the right to manage.</p>
6	Client Care	<p>REVISED 6.4 on dealing with lenders policy – expanded on information to be included e.g must include that the lender is also a client and a <b>procedure</b> to ensure that Part 2 of the UK Finance Handbook is checked by a fee earner and for verifying that all of those requirements have been satisfied, prior to exchange and recording on the file that the check has been carried out.</p> <p>Guidance Notes state: In relation to 6.4.c. ii, if the matter may affect the value of the property or its physical condition, the report should make it clear that the matter needs to be referred to the lender’s valuer or surveyor.</p> <p>The requirement for the policy to check and verify the lender’s Part 2 of the UK Finance Handbook requirements is necessary to protect lender clients, as lender requirements vary significantly within Part 2.</p> <p>Legal Eye sees many instances in file reviews where the lender is notified of an issue, only for the lender to respond referring back to Part 2 and stating it is for the solicitor to recommend if this is detrimental to the lender and to inform them of what advice the practice will give to mitigate or minimise the risk. This needs to be documented in terms of advice and the justification behind the advice</p> <p>6.6 Practices <b>must</b> have a <b>procedure</b> to monitor client satisfaction across all conveyancing clients.</p>

		Legal Eye notes this is across “all” clients and so cannot be offered on a random basis, or for a specific period of time
7	File & Case Management	<p>NEW 7.4 Practices must have a Procedure to:</p> <ol style="list-style-type: none"> <li>Minimise the risk of receiving avoidable requisitions from HMLR which <b>must</b> include how applications are checked for simple errors or omissions and how fee earners can access guidance on more complex applications.</li> <li>Ensure that clients are advised that the practice is able to <b>register</b> up to three addresses (including an email address) for service for them when registering their ownership of the property, at HMLR and the advantage of having more than one address registered.</li> </ol> <p>The previous requirement remains, now in 7.5 when reporting to the client at the end - Draws the client’s attention to HMLR Property Alert Service and other fraud guidance published by HMLR</p> <p>Guidance Note state: For effective supervision, it should be possible for a supervisor or colleague to be able to understand, within a matter of minutes, the objective, strategy for achieving that objective and the current position, on any file. Practices may use whatever method they wish as long as these outcomes are achieved, but methods may include:</p> <ul style="list-style-type: none"> <li>Having a progress chart or log of actions on the screen which indicates steps taken towards and tasks remaining before completion.</li> <li>Using a printed tick list within the matter file, showing the dates that steps were taken and therefore relative progress to date.</li> </ul>