

AUTUMN 2023

ESSENTIAL NEWS FOR LEGAL PROFESSIONALS

THE BRIEF



“
Back to
the future
”

Welcome to the thirteenth edition of the Brief.

The first time I edited The Brief was in the summer of 2006. Both Paul and I were still working for SA Partners <https://sapartners.com/our-story/> under the watchful eye of the late Paul Morris who we both highly respected and learned much from.

In 2007, in order to deliver specialist support services to the legal sector, we left to set up CPM21 and the rest as they say is history.

This will be the last time that I edit this magazine and I will leave you in the capable hands of Paul Jones who will produce future editions.



Since 2007 the legal profession has seen many changes. **We have seen the SRA's Outcomes Focused Regulation come and go.** There have been a multitude of other changes, and I thought it would be good as I stepped down as Editor to summarise some of the articles that have been published in The Brief since 2006.

Issue Number ONE: there were in fact two number one editions. The first was created when we were part of the Legal Services Team at S A Partners and the second first edition was in the summer of 2007 after CPM21 was formed.

Here are some of the topics covered:

Summer 2006 - Legal Services Commission (LSC) Preferred Supplier Readiness.

Summer 2008 - The Legal Services Bill- LLP the right practice structure? CLACs eight new Community Legal Advice Centre locations announced by the LSC to be operational by April 2010.

Autumn 2008 - CLANS Community Legal Advice networks.

Spring 2009 - the LSC will work towards accepting LEXCEL for the first time as an alternative to their own Specialist Quality Mark (SQM).

Autumn 2010 - LSC tendering round reduced number of Family suppliers nationally by 50% from 2400 to 1200 suppliers and a new Equality and Diversity section was added to the SQM in line with the Equality Act 2010. LEXCEL standard version 4.1 update came into effect.

Spring 2012 - LEXCEL v 5 came into force on 1 January 2012 and became mandatory for new applications from 1 July 2012.

Spring 2013 - the new COLP and COFA roles started from 1 January 2013 with Outcome Focused Regulation 2011 now in place. Cpm21 trained hundreds of COLPs and COFAs to perform their new roles.

Autumn 2013 - this was the last time our former colleague Gary Barker appeared on the front inside cover of the magazine. We focused on cash flow reminding firms that: **Fees are Vanity; Profit is Sanity; but Cash is Reality.** How well you manage each remains a critical management issue for a solicitor's firm and will do into the future.

Autumn of 2014, Hannah Menard appears on the inside cover for the first time, and she is still an important and valued member of our Consultant Team. We talked about 2015 bringing the now, ill-fated Delivery Partner relationships for Lead Contractors under the proposed new LAA 2015 Own

Clients and Duty Provider Contracts for what was then known as the CDS Criminal Defence Service (with its inverted swan logo!!) which disappeared into history at that time. Paul and I spent many happy hours assisting our client firms to draft their Delivery Plans. All our firms were successful with their tenders, but the LAA then pulled the rug, much to everyone's disappointment as to the wasted money and effort. This however was in my opinion to prove a turning point in the LAA's consolidation strategy.

Autumn 2022 - showed a picture of our greatly enlarged team of 10 Consultants and our long standing efficient and indispensable Senior Administrator Caroline Francis. We focused on the importance of Succession Planning with the sad demise of her Majesty the Queen and the end of the Elizabethan Era.

Spring 2023 - the 12th edition of The Brief highlighted the effect on practices of the new Sanctions Regulations and highlighted the SRA's approach to fines and referrals to the SDT.

It is amazing how many things have changed and have come and gone between 2006 to 2023 and who knows what 2024 will hold. How much of the change we have seen and are now seeing is for changes sake, I will let our readers decide. What is clear is that the pace of change in the legal sector is relentless.

In this edition therefore we focus on the following:

1. The New LAA 2024 Civil Contract which will come into force from 1 September 2024.
2. Paul Jones then considers File Reviews and their increasing importance in relation to SRA Regulatory Compliance.
3. Sanctions - Andy Clarke looks at the OFSI General Legal Services Licence and its potential use and pitfalls - and some recent case law and fines. Andy also points out that If conditions are not complied with in full, a criminal or monetary penalty, or public censure may be imposed by OFSI, with the breach also attracting regulatory attention from the SRA." The SRA has also indicated that OFSI are now referring solicitors' firms to them.
4. Our Guest writer, Jay Ball of Flotek tells us about the Current Cyber Risks for Legal Practices; the benefits of Cyber Essentials Plus and how Flotek can assist firms to mitigate these ever-increasing risks particularly as more and more firms go paperless or paper lite.

Please visit our website to see how we might help you: www.cpm21.co.uk. We, at cpm21, are constantly monitoring the changing regulatory map so we can assist firms to navigate the regulatory labyrinth and reduce risk. Cpm21 remains a constant source of support in this ever-changing world. Do come and speak to us.

As always, we hope you find this edition practical and useful. I wish all our readers well for the future. We would welcome your feedback.



Wayne Williams
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The New LAA 2024 Civil Contract

for lawyers

Looking forward, one thing we know will change in 2024 is the Legal Aid Agency's (LAA) Civil Contract.

This contract will come into force from 1st September 2024.

The contract will replace the 2018 and INTERIM 2023 Civil Contracts and will include one or more of the following categories of law:

- Family (Private Law and Public Law)
- Housing and Debt and Welfare Benefits (and Housing Loss Prevention Advice Service ("HLPAS"))
- Immigration and Asylum (inc DDAS and DAC)
- Mental Health
- Community Care
- Claims Against Public Authorities
- Public Law
- Clinical Negligence
- Education
- Discrimination
- Family Mediation

The contract will last for ONE YEAR until the 31st August 2025.

The LAA has the discretion to extend it for a further two or three years to 2028 subject to intervening MOJ reviews and the possible effects of a new government being in power:

"Contract Work awarded under this 2024 Contract procurement process will start on 1st September 2024 (the Contract Start Date) and will run until 31st August 2025 (subject to rights of early termination and the LAA's right to extend for up to a further three years)."

However in March 2023 the LAA changed its paradigm and issued an Interim Tender for new suppliers to enter the market and for existing suppliers to open new offices in new geographical areas or categories of law. The LAA has committed to doing the same going forward.

The LAA states in its recent Civil Tender:

"The LAA intends to offer opportunities at regular intervals for new entrants to tender to deliver Contract Work under the 2024 Contract and for existing Providers to tender for additional work in Categories of Law or from additional Offices. More details will be provided on those opportunities after the 2024 Contract has commenced."

Therefore you are likely to be able to join in the fun of using Bravo e-tendering portal more frequently!! It could of course signal increased competition for Legal Aid firms as new firms enter the market.

The LAA has made some significant changes to the 2024 Civil Contract and attendant documentation e.g. it has changed all the category Supervisor Declaration Forms in September 2023.

As firms prepare for the general VERIFICATION deadline in the current 2024 Civil Tender:

"Verification Date: for submitting Tender verification information for all Individual Bids 23:59 on 15 March 2024" (there are different dates for some categories in the IFA)

They should ensure that their Supervisors fill in the updated forms and not the old versions. In my view the requirements in those forms have been somewhat watered down by the LAA which may reflect the fact that Senior Lawyers are retiring and there are insufficient Lawyers with same level of expertise to replace them. It is indeed time for the LAA and the MOJ to turn its mind to the issue of SUCCESSION in both Civil and Criminal Law Legal Aid Firms. It's the elephant in the room that no-one is talking about or trying to resolve.

The limit on the maximum number of offices that a Supervisor can supervise (TWO) has been removed from the 2024 Contract but the 1 to 4 ratio of Supervisor to Fee Earner remains the LAA's limiter on the span of control. Therefore if you have 3 offices and you are supervising 2 Fee Earners at 2 of those offices, you cannot Supervisor anyone at the third office.

The LAA has even allowed Supervisors to supervise in more than one category of law. However there are some dangers in that if your workload and hours of casework in one category is diminished because you are spread too thinly. Also I am frequently told by Supervisors that they do not have time to do their File Reviews which as you know is a contract requirement. Paul Jones's

article sets out the importance of File Reviews and not only from a legal aid contract perspective.

The LAA has also made optional the requirement to have a monthly face-to-face meeting with the Fee Earners you supervise who are based in a different office from the Supervisor. Again that sounds good but if you exercise that option, you will still be required to evidence effective supervision of those Fee Earners.

Finally, please ensure that you are ready for the Verification phase. It is now often a more problematic phase than completing the tender even though that, in our view, is far more complex and confusing than it need be (this is illustrated by the Tender FAQs). It is also not helped by the LAA issuing new versions of its IFAs without issuing an amendments log showing what it has actually changed.

For those of you whose LEXCEL or SQM certificate will expire before the 1st September 2024, please note the LAA's instruction below and arrange your 2024 audit and get your letter from your Audit Body ASAP:

Applicant Type	Requirement
Applicants who intend to hold the SQM	- Pass desktop audit and provide evidence of this - Fully pass the Pre-QM audit within six months of the Contract Start Date
Applicants who intend to hold Lexcel	- Achieve Lexcel accreditation and provide evidence of this
Applicants who already hold Lexcel	- Must hold a valid accreditation that will be in force until at least the Contract Start date.
Applicants who already hold an SQM audited by the LAA's SQM Audit Provider	- Must hold a valid accreditation that will be in force until at least the Contract Start date.

However, please note the following from the LAA:

"Where the Quality Standard is in place but due to expire prior to the Contract Start Date, the LAA will accept the current Quality Standard Certificate, along with confirmation in writing from the Quality Standard provider of the date of the scheduled re-audit and that the Certificate will remain in force until the re-audit is complete."

Please also note that the SQM was substantially changed on 1st October 2022, and you need to take steps now to ensure you can meet the new Standard. We have and are helping a number of firms do just that.

To potentially complicate matters even further the Law Society is likely to issue a new version of LEXCEL in 2024 - possibly at the most inconvenient time for Legal Aid firms. We will be a running course on the new LEXCEL standard when it is published.

I have mentioned just a few of the changes in the 2024 Contract but I would recommend that Supervisors and aspiring Supervisors attend one of our New Legal Aid Supervision courses in 2024 to find out more about the requirements. The Course will be called "Legal Aid Supervisors and the new 2024 Contract requirements- are you ready?"

A list of dates and locations is set out below and more details can also be found on our website. We will also be sending course information to all Legal Aid firms early in 2024.

Cardiff -	7th February 2024
Chester -	27th March 2024
Cambridge -	30th April 2024
Leeds -	21st May 2024
Birmingham -	23rd May 2024
Reading -	5th June 2024



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File Reviews and their increasing importance in relation to SRA Regulatory Compliance

I know, I know. I heard the collective groans when people read the heading for this article. Unfortunately, file reviews have never been as important as they are now, with the Law Society Gazette full of headlines of situations which could have been avoided if effective file review and supervision were in place.

So, let's start with the regulatory requirements for file reviews.

The SRA Code of Conduct for Solicitors, RFLs and RELs.

The Code specifies the following in Section 3 "Service and Competence;"

3.2 - You ensure that the service you provide to clients is competent and delivered in a timely manner.

3.3 - You maintain your competence to carry out your role and keep your professional knowledge and skills up to date.

3.4 - You consider and take account of your clients attributes, needs and circumstances.

3.5 - Where you supervise or manage others providing legal services:

a) you remain accountable for the work carried out through them; and

b) you effectively supervise work being done for clients.

3.6 - You ensure that the individuals you manage are competent to carry out their role, and keep their professional knowledge and skills, as well as understanding of their legal, ethical and regulatory obligations, up to date.

There is a further provision in the Code of Conduct for Firms similar to 3.5 b) which talks about "an effective system for supervising client's matters." (SCCF 4.4)

The question for the above would be, how can this be implemented and evidenced?

Yes...you guessed it...file reviews.

The worse "sin" of all file reviews - treating them as a tick box exercise which doesn't evidence the word "effective", because, to any person external to the firm who may

look at these (such as the SRA, Lexcel or SQM auditors), it will be fairly obvious that this was the case.

Of course, whoever is carrying out the file reviews needs to be competent to do so, otherwise they may not pick up on what the file is "telling" them for the review.

File reviews can be much more than demonstrating effective supervision though.

Firms who are Lexcel accredited, or Conveyancing Quality Scheme members will know from the requirement to complete an annual risk review, that file reviews are an effective early warning system for identifying poor practice on files, and potential complaints. An example of this would be a review of the correspondence spike (or equivalent folder on a case management system), where the fee earner has not communicated with the client for an extended period following the initial instructions, despite evidence on the file where the client has been repeatedly asking for updates. (And believe me, that does happen!). File review analysis can provide excellent supervision data to feed back to fee earners to allow for continuous improvement.



Finally, as this article is about the increasing importance of file reviews in relation to regulatory compliance, it would be remiss not to include the biggest regulatory focus for the Solicitors Regulation Authority so far in this decade; the Money Laundering Terrorist Financing and Transfer of Funds (Information on the

Payer) Regulations 2017 and its various amendments to date.

The SRA have significantly stepped up their desktop and onsite audits in recent years, and for those firms in the scope of the Regulations, I have to say it's quite unlikely that you will escape an audit from the Regulator in one form or another. If you are the Money Laundering Compliance Officer (MLCO) then it is your responsibility to ensure that fee earners are complying with the requirements of the Regulations.

And how confident can you be about that?

If the firm isn't carrying out file reviews, or the ones they do carry out are carried out as a tick box exercise, you could be in for a very rude awakening. The SRA will call for files for either a desktop or onsite audit and review them. If there are multiple non-compliances, such as no evidence of Source of Funds or Source of Wealth on file, no client or matter risk assessment completed (or the risk of money laundering not assessed) or no effective evidence of Identification, then this raises the question by the Regulator about the "effective supervision" of client matters, as well as a whole host of unwelcome attention for the MLCO and the firm, which could result in disciplinary actions and fines.

Make sure the firm is completing its file reviews diligently, and using the corrective action information to continuously improve its compliance.

Don't become a headline in the Gazette.

Paul Jones

07796 36 32 69



Make sure the firm is completing its file reviews diligently, and using the corrective action information to continuously improve its compliance.



Sanctions - the OFSI Legal services general licence

The OFSI Legal Services General Licence is expiring on 28th October, HM Treasury may or may not renew; are you prepared if they do not?

A key feature of the General Licence is that it was issued to permit the payment of legal fees owed by individuals and entities designated under the Russia or Belarus sanctions regimes imposed by the UK government. Prior to the General Licence, payment for legal services (including payment for legal services provided on credit) required an individual OFSI Licence.

Considering the UK has designated over 2,000 individuals and entities across regimes aimed at President Putin, it is no surprise that OFSI were receiving a level of licence applications they would seek to reduce. As OFSI point out: Russia is a major G20 economy with significant economic ties to the UK and global economies. Allowing the provision of legal services under a general licence avoids the need for a licence in each and every matter, reducing the onerous application obligation placed on law firms.

However, it is not a get out of gaol free card!

A firm can provide legal advice to a person designated under either the Russia or Belarus regime and can receive payment from that designated person without having to wait for an OFSI Specific Licence, provided that the terms of the General Licence are met. There are fee limits in relation to 'pre-designation' work, and work started 'post-designation'; when they are placed on the list is critical.

It is the responsibility of any person or persons using the Licence to ensure that the activities undertaken fall within the terms of the Licence, and that the parties comply with the conditions of the Licence in full. If conditions are not complied with in full, a criminal or monetary penalty, or public censure may be imposed by OFSI, with the breach also attracting regulatory attention from the SRA.

If a firm breaches sanctions and you find yourself on the wrong side of OFSI, then the implications can be serious. Since June 2022 the law allows monetary penalties to be applied on a strict liability basis. In a divergence from the EU approach, and in line with the model used for U.S. financial sanctions, it is no longer necessary to prove that a person had knowledge or reasonable cause to suspect that they were in breach.

When they are on the list, they are on the list!

Designation compliance begins immediately and OFSI action taken in the August 2023 against 'Wise Payments' (a UK-based foreign exchange financial technology company) demonstrates the enforcement approach. Designation occurred at 11-05am on 29th June 2022; Wise allowed a cash withdrawal of £250 to take place at 7-25am the following day. The breach was assessed as 'moderately severe' and in OFSI's judgement a Public Disclosure was the appropriate and proportionate enforcement response.



Back to the initial question: If HM Treasury do not renew on 28th October - are you prepared?

- Are you aware of your designated clients?
- What if a client is placed on the list and 'pre-designation' work becomes 'post-designation'?
- Do you have the necessary Policies, Controls and Procedures in place to manage the risk?

And remember: we are not talking AML - sanctions compliance applies to all law firms, to all areas of law, and to all clients.



Andy Clarke FICA



Protecting Your Legal Practice: Understanding Cyber Risks in the UK and the Benefits of Cyber Essentials Plus

In today's interconnected world, where digital technology plays a pivotal role in everyday business operations, the legal sector in the UK faces significant cyber risks.

Flotek Legal manage over 100 legal practices IT & Communication services, so understanding these threats is crucial. In this update, we will explore the current cyber risks facing legal practices today and shed light on the advantages of gaining Cyber Essentials Plus certification to safeguard your legal practice against these threats.

The Rising Tide of Cyber Threats

Cyberattacks are on the rise across various industries, and the legal sector is no exception.

Legal practices, regardless of their size, store sensitive client data, confidential case details, and financial records. This makes them an appealing target for cybercriminals seeking to exploit vulnerabilities, positioning the legal sector as one of the most high-risk industries in the UK.

Here are some of the most prevalent cyber risks faced by legal practices in the UK and how you can safeguard your practice:

Phishing Attacks: Cybercriminals often send deceptive emails to employees, trying to trick them into revealing sensitive information or login credentials. These phishing attempts can lead to data breaches or unauthorised access to critical systems.

Flotek Advice: Ensure your IT Team scan all incoming mail automatically for impersonation attempts and possible unsafe web links. Also ensure you have monitoring and logging enabled on all access attempts.

Ransomware: Legal practices may fall victim to ransomware attacks, where malicious software encrypts important data, demanding a ransom for its release. Failure to pay can result in data loss and significant operational disruption.

Flotek Advice: Ensure you have security to detect behavioural changes on your computers and if this fails - Make sure your backup is checked & tested regularly.

Data Breaches: Legal practices store vast amounts of sensitive information. A data breach can have severe consequences, including legal and financial penalties, as well as damage to the practice's reputation.

Flotek Advice: Ensure you have the relevant procedures in place for a data breach which include reporting to the ICO within 72 hours, and a Cyber Security Team to contain the breach, assess the risk & act to protect.

Cyberattacks are on the rise across various industries, and the legal sector is no exception.

How will Cyber Essentials Plus Certification Help?

Cyber Essentials Plus is a government-backed certification program designed to help organisations protect themselves against cyber threats. Here's how it benefits legal practices:

Improved Security: Cyber Essentials Plus ensures that your practice has robust cybersecurity measures in place, reducing the risk of breaches and attacks.

Enhanced Trust: Clients trust legal practices with their sensitive information. Cyber Essentials Plus certification demonstrates your commitment to protecting their data, enhancing your reputation.

Regulatory Compliance: Achieving Cyber Essentials Plus certification aligns your practice with cybersecurity best practices, helping you meet regulatory requirements, including GDPR.

Business Continuity: Cyber Essentials Plus helps ensure business continuity by mitigating the risk of downtime caused by cyberattacks.

How to Achieve Cyber Essentials Plus Certification

To attain Cyber Essentials Plus certification, legal practices must undergo a comprehensive cybersecurity assessment. This assessment evaluates your practice's security measures, including firewalls, access controls, and malware protection, among others. It also includes vulnerability scans to identify potential weaknesses.

Once the assessment is complete, any identified vulnerabilities must be addressed. Achieving this certification demonstrates your commitment to cybersecurity, giving clients peace of mind and protecting your practice from the ever-present threat of cyberattacks.

In conclusion, the cyber risks facing legal practices in the UK are a growing concern. Protecting sensitive client information and ensuring regulatory compliance is of utmost importance. Cyber Essentials Plus certification is a proactive step that not only bolsters your practice's cybersecurity defences but also builds trust with clients, reduces costs, and ensures business continuity. In an increasingly digital world, it's a crucial investment in the safety and success of your legal practice.

Jay Ball

Flotek Legal

Chief Executive
Officer (CEO)



Technology Specialists
for the Legal Sector

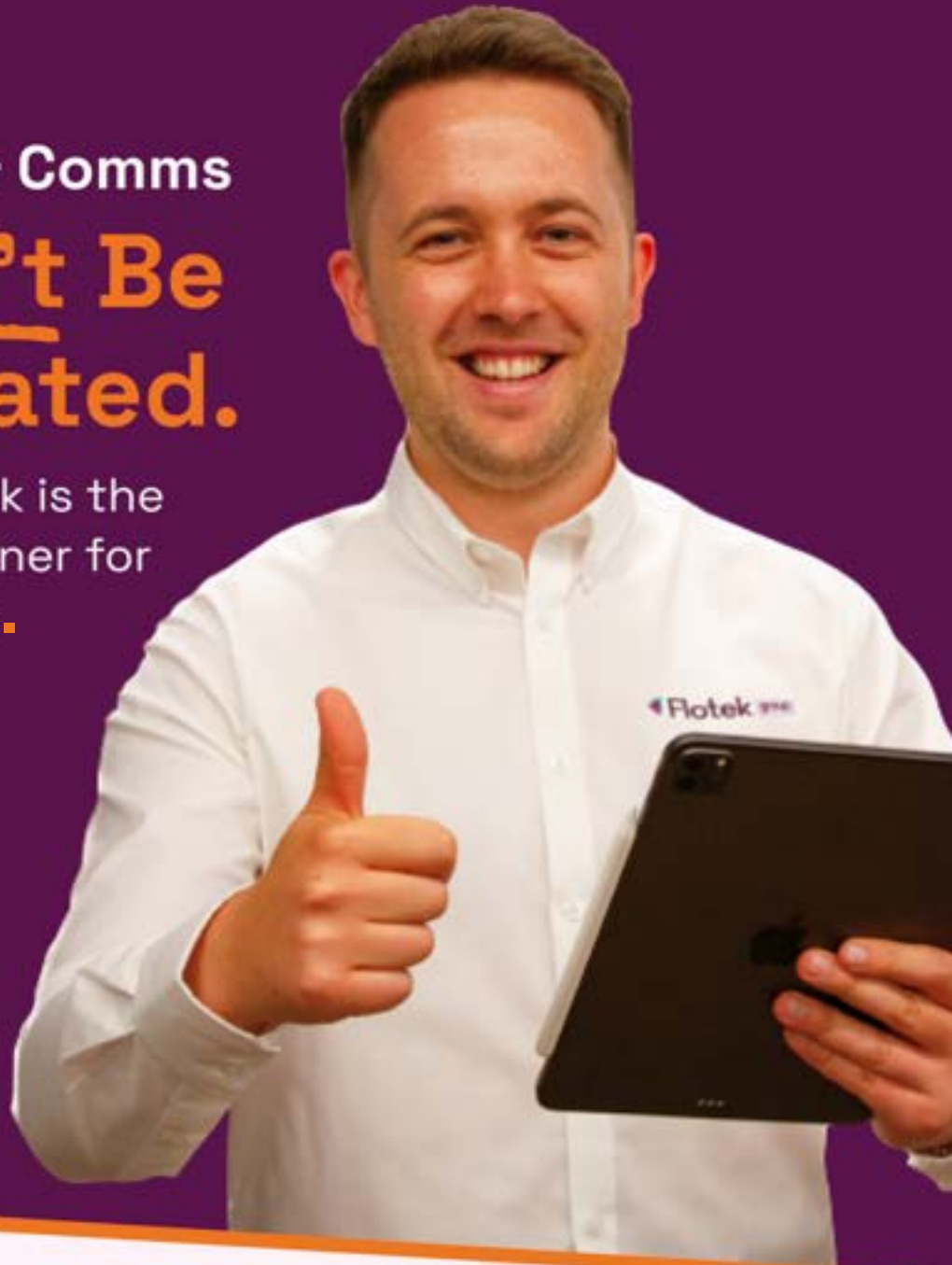


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CPM21 Training Courses

CPM21 have a range of courses for everyone online/at local venues in England & Wales and delivered by specialists in their fields including:

- COLP & Deputy COLP
- Anti-Money Laundering Update
- Legal Aid Supervisors and the new 2024 Contract Requirements - are you ready?
- Cyber Crime & Data Security
- Social Media for Small Legal Firms
- COFA Refresher & Update
- Complaints Handling & LEO
- Networking & Marketing
- Introduction to Practice Finance

Call us
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For further information, including venues, dates, prices and how to book, visit our website www.cpm21.co.uk

We can also arrange a more tailored provision of training to suit the needs of your firm.

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Published by: cpm21, Ty Menter (Venture House) Navigation Park Abercynon CF45 4SN

cpm21 (21st Century Professional Management) is a trading name of cpm21 Ltd.
Registered office: Ty Menter (Venture House) Navigation Park Abercynon CF45 4SN
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© November 2023



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