



Professional Indemnity Insurance for the UK Legal Sector
File retention and
destruction timeframes

The Limitation Act 1980 states that the primary limitation period is six years in which an action in tort can be brought. As a result many solicitors view the minimum period that any file should be kept for as six years, as most claims are made within this period. However, the six year period should not be taken at face value and consideration needs to be given to particular disciplines of law, the complexities of a matter and of course, legislative and regulatory obligations, as to whether a file should be kept for a longer period.



SRA Code of Conduct

The Solicitors Regulation Authority (SRA) Handbook does not detail specific rules on the length of a time a file should be retained for in any discipline of law.

Firms are required to have appropriate file closure processes and procedures in place to manage risk (Chapter 7 SRA Handbook) accordingly and fulfil your client care obligations (Chapter 1 SRA Handbook).

In relation to the SRA's Minimum Terms and Conditions for Professional Indemnity Insurance there are no requirements on insurers to specify how long an insured should retain files for. What is important is that insurers can access the file in the event of a claim being made or notifiable circumstance.



MLR 2017

Regulation 40 (3) MLR 2017 states that documents and information obtained to satisfy client due diligence requirements should be kept for a period of five years,

beginning on the date on which the relevant person is made aware of the retention. You are not required to keep records for more than ten years, Regulation 40(4) MLR 2017.



GDPR

As with the MLR 2017, you have to consider the implications of GDPR, firms can not hold personal data indefinitely, or for longer than is necessary.

Therefore, it is vital that you have an appropriately worded client care letter, signed by the client, providing consent to hold personal data for a particular length of time.



Client Care Letters

Client care letters have also be referred to as engagement letters and retainers. To take into account your regulatory and legislative obligations, as detailed above, you should ensure that your client care letter includes the following:-

- How long you will retain the file;
- What will happen to the file after that time;
- Costs in relation to storage, retrieval and additional copies

When determining how long to retain a file, firms need to be mindful of specific client requirements in relation to different disciplines of law and obligations placed on them by bodies such as the UK Finance Mortgage Lenders.



Best practice: file retention timeframes

Residential Conveyancing: Sale files should be retained for six years and 15 years for purchase files, although 12 years would be sufficient to cover most situations.

Wills/Codicils: Files should be retained for six years after the testator has died and the estate has been wound up.

Trusts: Files should be retained for at least six years after the last action in the trust has been taken. Limitation will not run against minors until they have reached the age of 18.

Civil Litigation: Files should be retained for six years, but be mindful of files involving minors or persons with a disability, where the limitation period may well be extended.

Commercial: Commercial property and commercial transaction files should be retained for 15 years as there is a greater likelihood of claims outside the primary limitation period.

Matrimonial: Financial and maintenance matters should be retained for six years, however, where the matter involves a minor, consideration should be given to extending the limitation period until they have reached the age of 18.



Who owns what?

Before closing a file, archiving and destruction it is important to understand who owns what documents in a file, some documents will belong to you as the firm, some to your client and if applicable, some to a third party. So how do we determine what is what? The Law Society issued guidance on this by way of a practice note.

- **Client documents:** correspondence drafted for the clients benefit, including letters to third parties and received by you for the client and instructions and briefs.
- **Firm's documents:** if the preparation of such documents is not chargeable to the client, then the documents belong to the firm, such as copies of letters written to the client, letters from the client to you detailing authority and/or instructions, copies of letters written by you to third parties, time sheets, books of accounts, diary entries and tape recordings.
- **Documents prepared by a third party:** if these were prepared during the course of the retainer and sent to you then they belong to the client. These include medical and witness reports, counsel's advice and opinions, correspondence received by you from third parties.



File retention policy

Every firm should have a file retention policy which takes into consideration the points raised above, and should specifically deal with file closing procedures and the archiving process. Care should be taken to ensure that you comply with your regulatory and legislative obligations. Ensure client confidentiality is maintained during the file closing and destruction process. No documents are left to fall into the wrong hands.



Electronic Storage of Files

Archiving paper files can be expensive and with more firms opting for paperless files, electronic storage of files is a cost effective alternative. However, there are risks with storing files electronically and stringent procedures must be in place to ensure that scanned materials are accurate and can be relied upon in court. You must be able to prove in court that the scanned document is a representation of the original.



Ceasing to trade file retentions

Depending whether the firm has a successor practice or is ceasing with run-off cover you must ensure that you undertake appropriate steps to close your firm, particularly in relation to file storage. File closure and storage procedures should be in place and in compliance with your legislative and regulatory obligations. This will include appropriate arrangements for file storage if the firm is being taken over, or if the firm is ceasing to trade, arranging for another firm to store the files, or storing the documents electronically. Your insurer must be informed of who to contact in the event of a claim being made or circumstances being notified, but also that the file will be available to review. You should also notify the SRA of details of where the files will be stored and who to contact should access be required.



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