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Guide to File Reviews

(England & Wales)

Introduction

Efficient management of client files is essential if a firm wants to run an efficient practice, manage the risks that may arise in file administration and at the same time fulfil its client care obligations set out in the Code of Conduct for Firms (COCF). In addition, good file management helps solicitors to comply with their own obligations under the Code of Conduct for Solicitors, RELs and RFLs (COCS). File reviews form an extremely important part of the client care and supervisory process.

The Regulations

Under the COCF, the obligations for firms to have effective business systems and controls in place in the management of their business, and obligations in relation to clients, remain largely unchanged from the previous requirements in the 2011 Solicitors Regulation Authority (**SRA**) Handbook. Whilst file reviews are not referred to specifically in the Codes, there are several rules which are relevant here. Client care obligations are now dealt with in the Codes in general terms, whereas previously, the requirements were quite prescriptive:

- **Rule 2.1** of the COCF requires that firms have effective governance structures, arrangements, systems and controls in place that ensure that firms comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements which apply to firms.
- **Rule 4.2** of the COCF requires that you ensure that the service you provide to clients is competent and delivered in a timely manner, and takes account of your client's attributes, needs and circumstances.
- **Rule 4.3** of the COCF requires firms to ensure that their managers and employees 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.
- **Rule 4.4** of the COCF requires that you have an effective system for supervising clients' matters.
- **Rule 3.2** of the COCS, which places similar obligations as for firms on solicitors, and requires solicitors to ensure that the service provided to clients is competent and delivered in a timely manner.

File Review Systems

Firms commonly use two types of file review systems:

- informal reviews by fees earners, and
- formal independent reviews.

a. **Informal file reviews**

Informal file reviews are where fee earners are required to carry out a regular review of all of the open files for which they are responsible. This needs to be an ongoing review and we recommend that it takes place at least once a month.

Under both Codes of Conduct, firms and solicitors are under an obligation to ensure that the services provided are competent and delivered in a "timely manner" – regular file reviews helps to meet these obligations.

In addition to fee earner reviews, supervisors/heads of department should check regularly for inactivity on client files by reviewing monthly matter print-outs or similar reports produced by firms. Reviewers should look for matters where over one month has elapsed since time was last recorded (where time recording is done).

b. **Formal file reviews**

Independent formal file reviews should also be carried out on a regular basis. The frequency of these reviews will depend on the member of staff being subject to review, i.e. more frequent reviews will be required for less experienced or newly qualified staff or for staff where issues have arisen on previous file reviews and corrective action was needed.

Formal file reviews will usually be undertaken within the relevant department as this then enables any substantive issues that may arise to be discussed. Firms will need to appoint appropriate staff members in each department to carry out these reviews.

Selecting Files and Frequency

Selecting Files for Formal File Reviews and Frequency of Reviews

File Selection

We recommend that files are selected from monthly matter print-outs. Files with high work-in-progress value or long periods of inactivity, unusual client balances or unrecovered disbursements should be selected for review.

If you are a firm where fee earners undertake a range of different work types, the file selection should be representative of the spread of work.

Frequency of Reviews

Firms should set a minimum frequency for file reviews, for example, two/three files per month/quarter per fee earner. As mentioned above, more frequent reviews will be required for staff with less experience or for staff where issues have arisen on previous file reviews and corrective action was needed.

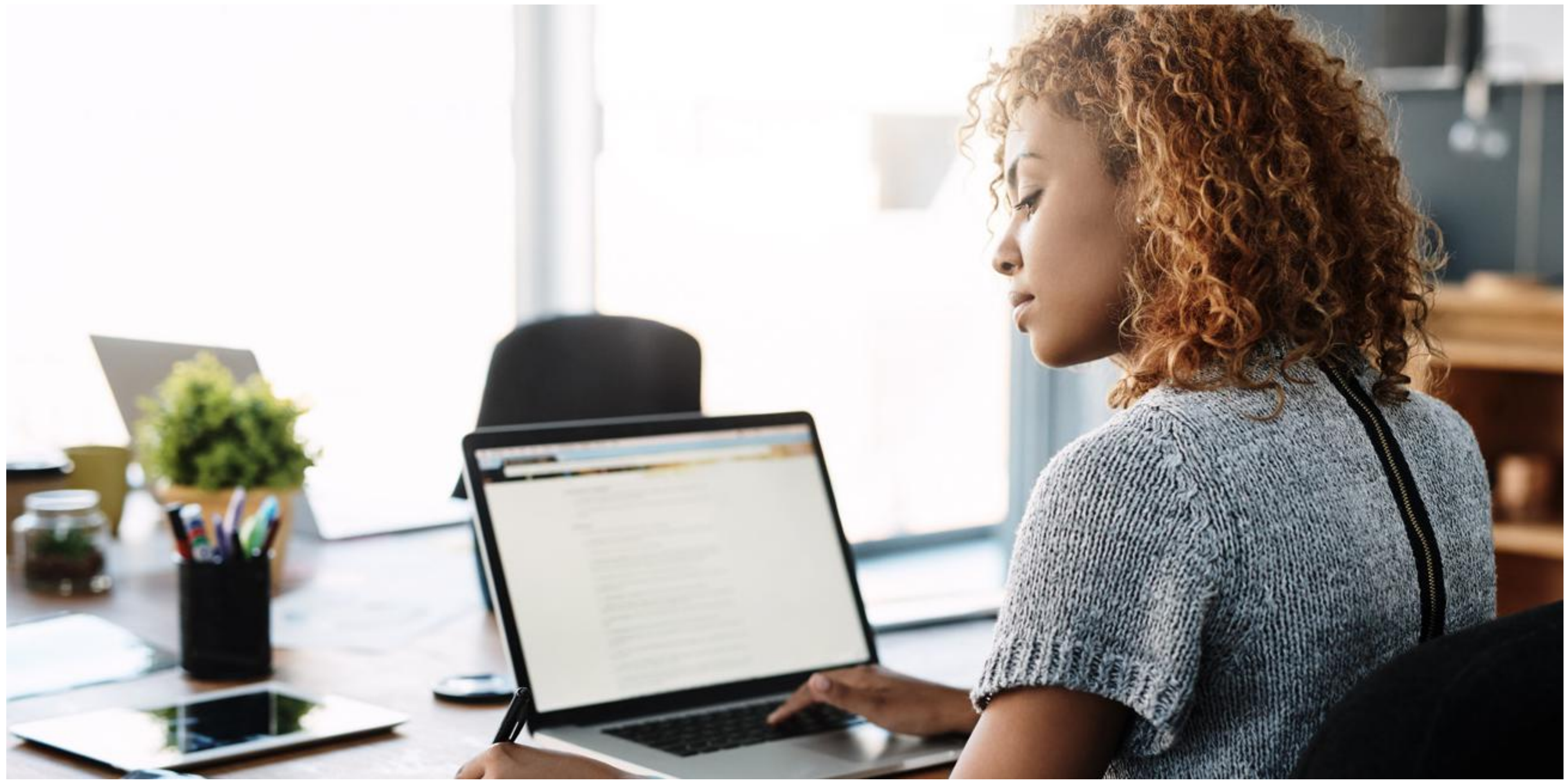
Firms should also allow fee earners to ask for an independent review at any time.

Responsibility for File Reviews

Firms should remind staff that if they chose to delegate file reviews to their colleagues and/or third parties (if firms are happy to allow this), that they will remain ultimately responsible for keeping their own matters under constant review, to consider whether they require progressing, whether further work is required or if work remains outstanding.

Using File Review Forms

Firms should prepare a standard File Review Form for use, which reviewers should complete each time they undertake an independent file review.



Keeping evidence of File Reviews

It's important that clear evidence is kept of all file reviews so that firms can check that reviews are being undertaken as required and an audit trail is available.

Firms should ensure that fee earners are required to keep contemporaneous file notes of all informal file reviews and place these on the relevant client file.

Staff undertaking formal independent reviews should be requested to place a copy of the completed File Review Form on: (i) the client file and (ii) in a central register of all formal reviews undertaken.

A central register enables firms to verify that reviews are happening as planned, and that any corrective action that has been identified has been carried out.

Corrective Action

Firms should make it clear to staff that when corrective action is specified in a File Review Form as being required, it is the responsibility of the matter handler (i.e. the fee earner) to deal with this within an agreed timeframe. We recommend that this timeframe is a maximum of 28 days.

The reviewer will then need to verify that the corrective action has been dealt with to his/her reasonable satisfaction and sign off the form at the next monthly review.

Reviewing Data from File Reviews

Firms should ensure that a senior member of staff (for example, a Managing Partner or COLP) reviews all file review data on a regular basis. We recommend that this takes place at least annually. Reviews should include an analysis of the data and those responsible for analysing the data should provide recommendations based on the data that emerges.

If trends are identified, firms should take steps to rectify these so far as possible – this could be done, for example, by giving additional training if required. Firms should remember that COLPs will need to consider whether any trends constitute a material breach which may need to be reported to the SRA.

Suggested Process

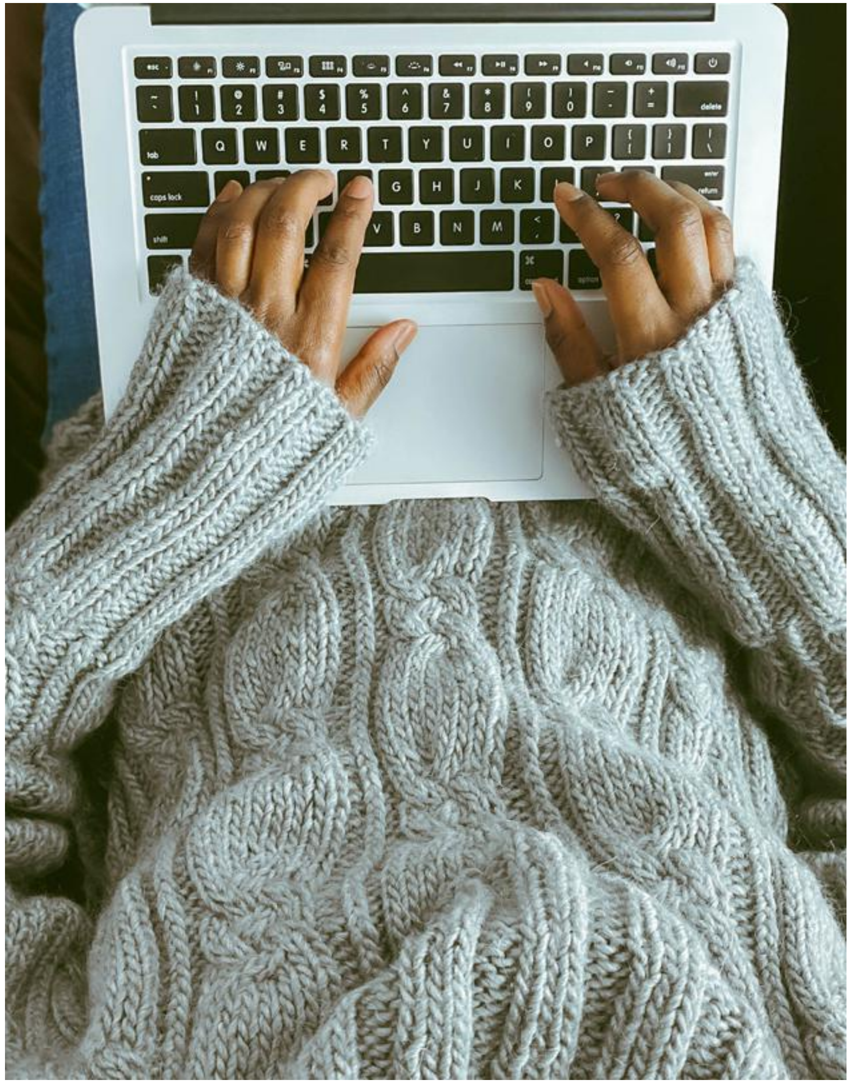
Suggested Process to be followed by firms for effective File Reviews:

File reviews will include both technical and procedural considerations. When conducting a review, we recommend that you consider the following matters:

- whether the initial file risk assessment has changed and if so, whether this has been documented;
- whether there is any outstanding correspondence that needs to be dealt with or responded to;
- whether any action is needed to deal with or implement instructions;
- whether the fee earner needs to pursue any inactive client matters;
- whether documents are filed/stored in an orderly way;
- whether the client's instructions are being adequately met and that the service being provided takes account of the client's attributes, needs and circumstances.
- whether the client needs to be contacted to discuss varying the case plan or any instructions;
- whether there is a need to diarise anything (e.g. are all key dates recorded on the file and in accordance with the firm's Key Dates Policy/Procedure);
- whether the file needs to be reviewed under the firm's File Closure Procedure (see further below).

Reviewing files remotely

As a result of the COVID-19 pandemic, it's likely that increased numbers of staff will work from home either on a permanent basis or at least part time. Firms will need to ensure that their file review processes are adapted so that reviews can continue to be undertaken for staff working at home. File reviews will become increasingly important where staff have been out of the office for prolonged periods of time and may feel isolated, and the risk of errors occurring may increase for a variety of reasons. Effective supervision, partly by the use of file reviews, will help firms to identify and mitigate the risks associated with home working. Firms may wish to cover these issues in a separate "Working from Home" policy.



Resources

The Law Society has issued a Practice Note containing useful information and guidance on file closure management:

https://www.lawsociety.org.uk/topics/business-management/file-closure-management

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