LOCKTON

Lockton Solicitors

GUIDE TO KEY DATES

INTRODUCTION

A common cause of claims against law firms is a failure to meet or adhere to Key Dates on a client matter. As with most issues that give rise to claims and complaints, firms can take a number of simple steps to help prevent issues arising. This helps to minimise the risk of or avoid complaints and/or claims and, as a consequence, less fee earner/risk management time is spent dealing with these matters. In turn, this should help minimise the risk of reduced staff morale and a better claims experience and outcome for firms in fewer claims paid out by insurers, fewer excess payments and a less adverse effect on insurance premiums.

Whilst many dates may be relevant to a client matter, a Key Date is one which is important or material and which, if missed, is likely to lead to the client suffering a loss or some other prejudice. Examples of key dates include the expiry of statutory limitation periods, dates imposed by court directions and the dates by which SDLT must be paid before a penalty is imposed.

WHY IS IT SO IMPORTANT TO COMPLY WITH KEY DATES?

It should be self-explanatory to all of us why it's extremely important that Key Dates are not missed on client files. However, we set out below a number of the reasons why:

- The Codes of Conduct for Firms and for Solicitors require both firms and solicitors to act in the best interests of their clients (see also Principle 7). In addition, Rules 3.2 and 3.6 of the Code of Conduct for Solicitors, RELs and RFLs (COCS) provide that the service we provide to clients is competent and delivered in a timely manner and by individuals competent to carry out their roles. Rule 4.2 of the Code of Conduct for Firms (COCF) places a similar obligation on firms.
- Clearly, in order for a firm and solicitor to be able to discharge these obligations, both will need to ensure that they record and meet all Key Dates.
- If a Key Date is missed, it could have all sorts of other adverse consequences for a client and for a firm. For example, missing the expiry of a statutory limitation period may mean that a client is no longer able to seek redress for a matter and similarly, if SDLT is not paid within the required period, a client may be liable to incur a significant fine which ultimately a firm may have to take responsibility for.
- Your firm may be exposed to a risk of complaint from the affected client and/or a claim for damages for any loss suffered which may affect the firm's insurance risk profile.
- Ensuring that Key Dates are clearly recorded means that the risk of missing deadlines is reduced in the event that a fee earner is absent from the office on leave or through illness or if a fee earner leaves the firm.

WHAT WE CAN DO TO HELP ENSURE THAT WE DON'T MISS KEY DATES

Firms should put in place a Key Dates policy which should be made available to all relevant staff. The section below sets out the information that should be contained in the policy. It is important that the policy clearly sets out the process for staff to follow to ensure that Key Dates are recorded and stress the importance of and rationale for doing so.

WHAT TO DO NEXT

We recommend that firms take the following steps:

- Appoint an appropriate person to be responsible for producing your Key Dates policy.
- Appoint an appropriate person to be responsible for identifying, collating and recording the common Key Dates in each department at your firm.
- Prepare your Key Dates policy. We recommend that the policy include the following information:
    - An overview of the importance of recording Key Dates
    - A table/schedule at the back of the policy setting out the common Key Dates by work type for each department at your firm.
    - The procedure for recording Key Dates at your firm. This should include a requirement for Key Dates to be recorded:
        i. on the client file.
        ii. in the fee earner's own work diary and.
        iii. in a central Key Dates diary (as a backup system).
- The policy should set out how the procedure for recording will be achieved at your firm – for example, some firms may have a case management system that allows for dates to be recorded electronically and for automatic reminders to be sent out to fee earners.
- If your firm does not have the ability to send electronic date reminders, the policy should provide details of the person responsible for reminding those dealing with files of upcoming Key Dates (and details of their deputy if absent).
- The policy should also state that the recording of Key Dates on files will be checked as part of the file review process.
- Details of the named contact in each department to assist with any Key Date queries.
- What will happen in the event of non-compliance with the policy - for example, if Key Dates are repeatedly missed by a fee earner, the fee earner may be subject to disciplinary action.
- **Training:** Once the policy has been finalised, all relevant staff should receive training on the policy. This should explain to staff the importance of following the policy and the potential risks to the firm of non-compliance and run through the procedure to be followed to identify and record dates. Training should take place at the time of staff induction and then refresher training should take place [regularly/at least annually - please amend as appropriate for your firm].
- **Policy review and monitoring:** Appoint an appropriate person to be responsible for reviewing and auditing the processes to ensure that they work effectively. Any changes should be notified to the person responsible for compliance. The person appointed should keep appropriate records documenting the review and audit process.

Key Dates Policy

KEY FACTS

This section provides a brief overview of the main points of this Policy. It is not intended to be a substitute for reading its entire content, which we ask all staff members to do.

What do we mean by a Key Date and why are they so important?

A Key Date is a date which is important or material to a client matter, and which if missed, may lead to the client suffering a loss or prejudice. It can also lead to a client making a complaint or professional negligence claim.

Regulatory Obligations

Both the Firm and solicitors at the Firm are subject to regulatory obligations that require them to act in the best interest of their clients. We are also required to ensure that the service we provide to our clients is competent and delivered in a timely manner. To be able to comply with these obligations, we need to ensure that we meet all Key Dates on any matter.

Using Precedents

This policy sets out the type of precedents available for use by staff. Staff may on occasion be permitted to use other documentation that do not form part of the Firm's precedent database, but they must obtain prior written approval before doing so.

Key Dates for each Department

The Firm maintains a list of common Key Dates for each department. You should refer to this to help you when considering the Key Dates that may apply to any matters. This list is annexed to the Firm's Key Dates Policy.

Process for recording Key Dates

The Firm has a process for recording Key Dates which fee earners must follow. This includes: [Please amend as appropriate] fee earners recording all Key Dates clearly on the client file, in their own work diary and also in the Firm's central Key Dates Diary (where dates are not picked up automatically by the Firm's practice management system).

This will help to ensure that Key Dates are not missed and can also be easily identified where a client matter is, for whatever reason, dealt with by another fee earner when the original fee earner is absent from the office. This process is detailed in this Policy.

Ongoing Monitoring

Fee earners are primarily responsible for ensuring that Key Dates are recorded and met. We will also review Key Dates as part of the Firm's file review process and will appoint a person to be responsible for checking the Firm's central Key Dates Diary [Please amend as appropriate] at regular intervals.

POLICY

1. Purpose

This Policy sets out [Insert firm's name]'s (the "Firm") policy regarding the recording of Key Dates that may apply to any client matter.

We are committed to providing an excellent standard of service to all of our clients and ensuring that we meet all Key Dates that may apply to a matter forms an integral part of that service.

2. Scope and Applicability

This policy applies to all for all fee earners and support staff who are involved in working on client matters.

3. What is a Key Date and why are they so important?

A Key Date is any date which is important or material to a client matter and which if missed, may lead to the client suffering a loss or prejudice. It may also lead to the Firm being subject to a complaint or a claim for professional negligence by the client.

There are many types of Key Dates and they include the following (this list is non-exhaustive):

- A date by which the Firm or a solicitor must comply with an undertaking.
- A date by which documents must be filed in court or at HM Land Registry.
- A date by which Stamp Duty Land Tax must be paid to avoid penalty.
- A date by which an obligation contained in a court order must be complied with.
- Other statutory or contractual time limits that need to be complied with.
- Statutory limitation dates.

Key Dates will of course vary between departments, and it is important that all possible Key Dates for each department in the Firm are identified and that staff are made aware of these.

4. Regulatory Obligations

Principle 7 of the SRA Principles requires you act in the best interests of each client.

Paragraphs 3.2 and 3.6 of the Code of Conduct for Solicitors, RELs and RFLs (COCS) requires that the service provided to clients is competent and delivered in a timely manner, by individuals competent to carry out their roles. Paragraph 4.2 of the Code of Conduct for Firms (COCF) places a similar obligation on firms.

It is clear that in order for a firm and solicitor to be able to properly discharge these obligations, both will need to ensure that they record and meet all Key Dates.

5. Departmental Key Dates

Each department at the Firm will appoint a person responsible for collating a list of common Key Dates within that Department. This list will be reviewed annually and circulated to all staff to assist them in identifying Key Dates.

6. Process for recording Key Dates

At the outset of any new matter, all fee earners must consider whether any Key Dates will apply to the matter. When considering Key Dates, we recommend that fee earners should refer to the list of common Key Dates maintained by each department to help ensure that no dates are missed.

If a Key Date is identified, either at the outset of a matter or later, the fee earner should ensure that the date is [please amend to reflect your firm's process]:

i. entered in the Firm's Key Date Diary.

ii. recorded in a prominent place on the client file; and.

iii. entered in the fee earner's own work diary – an appropriate date for a reminder should also be diarised in the same way.

Recording dates clearly in this way helps to ensure that no dates are missed either by the fee earner or by anyone else who may be working on a client file with them or in their absence

7. Ongoing Monitoring of Key Dates

7.1 By Fee Earners

Fee earners are responsible for monitoring all Key Dates recorded in the Firm's Key Dates Diary [Please amend to reflect your Firm's process]. Fee earners must also record any new Key Dates that may arise during the life of a matter or any changes to the Key Dates already recorded and take appropriate action when such a change occurs. If a fee earner delegates this job to a member of the Firm's support staff, they should remember that they will remain primarily responsible for complying with Key Dates.

7.2 During File Reviews

Staff responsible for undertaking file reviews shall check fee earner diaries against Key Dates as part of the review of each client file.

7.3 By Supervisors/Departmental Heads

The Firm shall appoint a person to be responsible for regularly checking that Key Dates recorded in the Firm's Key Dates Diary [Please amend to reflect your Firm's process] are adhered to and where not, to liaise with the fee earner to ascertain why not. Where appropriate, the relevant supervisor should undertake a root cause analysis to ascertain the reason for the date being missed.

The person responsible for this at the Firm is [insert name].

8. Training

The Firm will provide all staff with annual/regular training [Please amend to reflect your Firm's process] on the importance of complying with its policies and procedures, including this Key Dates Policy. This may be done on a departmental basis, given that different Key Dates will be specific to different departments at the Firm.

9. Non-compliance

If we don't meet Key Dates then both the Firm and the relevant solicitor may be subject to a complaint from a client and if the client suffers a loss this may lead to a claim being made on the Firm's professional indemnity cover.

If staff do not comply with this Policy and repeatedly miss Key Dates, then this may become a disciplinary matter.

10. Review

This Policy will be reviewed annually to ensure it complies with current regulatory requirements.

The Firm will provide training for all relevant staff on this policy, including how to access precedents for use. Training will take place initially at the time of induction and refresher training will take place regularly in order to remind staff of the importance of, and rationale for, using the Firm's precedents rather than documents that they have used previously.

11. Policy Owner

This policy is owned by the [Please insert as appropriate] who is responsible for implementing, maintaining and ensuring review of this Policy.

12. Document Control

[As per existing Lockton precedent]

Key Dates Checklist

NOTE: Please note that the actions listed in this Checklist are either regulatory requirements or we consider that the action stated is good practice and will assist the firm to meet its regulatory obligations.

	Recommended Actions	Satisfied / Completed?	Reference / Details
1	Appoint a person responsible for producing Key Dates policy.		
2	Appoint a person to be responsible for collating a list of common Key Dates within each Department.		
3	Prepare and put in place a Key Dates policy to include: • An overview of the importance of recording Key Dates. • The process for recording Key Dates at your firm. • Details of the person responsible for collating common Key Dates in each department. • Details of the named contact in each department to assist with any Key Date queries. • Consequences of non-compliance with the policy for the firm and staff. • A table/schedule at the back of the policy setting out the common Key Dates by work type for each department at your firm.		
4	Appoint a person to be responsible to regularly check that Key Dates noted in the Firm's Key Dates Diary are complied with, and to liaise with fee earner to find out why not if missed.		
5	Ensure fee earners also record any new Key Dates that may arise during life of a matter or any changes to Key Dates already recorded.		
6	Ensure all supervisors undertake root cause analysis to ascertain reason for dates being missed, where this happens.		
7	Ensure File Review checklist includes checking that Key Dates have been recorded in accordance with the Key Dates policy.		
8	• Ensure the firm's training programme includes training on Key Dates for all relevant staff, including on the Key Dates policy and processes to be followed, why it is important to follow the policy and the potential risks to the firm and staff if they fail to do so. • Training may be on a departmental basis to cover different Key Dates for different departments. • Training to be provided at induction and periodic refresher training.		
9	Appoint a person to be responsible for the review and audit of Key Dates processes from time to time to ensure that the policy is being followed.		
10	Ensure evidence of these reviews and audits to be made available. Appropriate records to be kept by reviewer.		

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