LOCKTON

Lockton Solicitors

# GUIDE TO FILE REVIEWS

## 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 fulfil its client care obligations set out in the SRA Code of Conduct for Firms (COCF).

In addition, good file management helps solicitors to comply with their own obligations under the SRA Code of Conduct for Solicitors, RELs and RFLs (COCS).

File reviews form an important part of the client care and supervisory process.

## THE REGULATIONS

File reviews are not specifically referred to in the COCF or COCS, but they are nevertheless an effective tool particularly in achieving, maintaining and demonstrating compliance with the following:

- Paragraph 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.
- Paragraph 2.5 of the COCF requires that you identify, monitor and manage all material risks to your business.
- Paragraph 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.
- Paragraph 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.
- Paragraph 4.4 of the COCF requires that you have an effective system for supervising clients' matters.
- Paragraph 3.2 of the COCS, places similar obligations as COCF 4.2 on solicitors, and requires solicitors to ensure that the service provided to clients is competent and delivered in a timely manner.
- Paragraph 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.

## 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 help to meet these obligations.

In addition to fee earner reviews, supervisors/heads of department should regularly check for inactivity on client files by reviewing monthly matter or similar reports produced by firms. Reviewers should look for matters where no activity or time has been recorded over one month has elapsed since time was last recorded.

**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 peer reviews which enables any substantive issues that may arise to be discussed.

Firms should appoint appropriate staff members in each department to carry out these reviews.

## FORMAL FILE REVIEWS - SELECTING FILES AND FREQUENCY OF REVIEWS

### File Selection

We recommend that files are selected from monthly matter reports.

Files with high work-in-progress value, 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.

More frequent reviews will be required for staff with less experience or for staff where issues have been identified on previous file reviews.

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

## RESPONSIBILITY FOR FILE REVIEWS

Firms should remind fee earners that regardless of formal file reviews (whether peer or outsourced as some firms do), they will remain ultimately responsible for keeping their own matters under constant review to ensure that they progress in a timely manner.

## USING FILE REVIEW FORMS

Firms should use a standardised File Review Form which reviewers should complete each time they undertake an independent file review.

The standard form can be used as a firmwide baseline but where necessary/appropriate additional questions can be included to reflect nuances of particular work types.

## KEEPING EVIDENCE OF FILE REVIEWS

It is 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 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 undertaken as required/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 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 (e.g. a Managing Partner or COLP or Risk Manager) 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 address these – 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 serious breach which may need to be reported to the SRA.

## SUGGESTED PROCESS 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 appropriate client due diligence has been carried out
- Whether the client has been provided with appropriate costs information.
- 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).

Post pandemic, the working environment has changed with many staff working from home or hybrid working. 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 if out of the office for prolonged periods of time. Without effective supervision for those at home, there is an increased risk of complaints and/or claims. 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.

## USEFUL RESOURCES

- Law Society Guide: Managing and closing files (March 2020):

  Managing and closing files | The Law Society

- Law Society Risk and Compliance Section Feature (April 2017):

  File audits - a positive experience | Feature | Communities - The Law Society.

- SRA Guidance: Effective Supervision (November 2022):

  SRA | Effective supervision - Guidance | Solicitors Regulation Authority.

## File Reviews 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 | Firm should have a policy in place for dealing with file reviews including:<br>a. details of relevant regulatory requirements.<br>b. a clear file review procedure, for both informal and formal independent reviews, which should include the review frequency for qualified and non-qualified staff/ with different levels of experience; details of reviewers, the basis for file selection and what should be considered during the file review.<br>c. a procedure for reviewing files where held by staff members working at home. | | |
| 2 | Firm should agree a suitable basis for file selection. File selection should be generated at random from monthly matter report.<br>Selection should include inactive files, those with high WIP value, long periods of inactivity, unusual client balances or unrecovered disbursements.<br>Reviews should be representative of different work types if fee earner undertakes range of work.<br>Fee earners should be permitted to ask for an independent review at any time. | | |
| 3 | Fee earners should undertake informal file reviews of their own files on a monthly basis should be required to place a contemporaneous file note of the review on the client file. | | |
| 4 | Firm should appoint appropriate persons to undertake formal independent reviews of client files in each department on an agreed periodic basis, as set out in the firm's policy. | | |
| 5 | Firm should prepare a standard file review form to be completed by all file reviewers undertaking formal independent reviews.<br>Reviewers should place a copy of this form on the client file and also with a central register of reviews to be maintained by the firm. | | |
| 6 | Firm should establish a central register of file reviews to track that reviews are being undertaken. | | |
| 7 | Firm should appoint a senior member of staff to be responsible for checking that any corrective action required on files is completed satisfactorily within the agreed timescale (we recommend maximum of 28 days) and that any recommended follow-up actions, such as additional training or mentoring, is undertaken.<br>The person appointed should place a note on the relevant file signing off on the action undertaken. | | |
| 8 | Firm should undertake a final written review of files before they are archived, to include checking whether client's objectives were met and, if not, why not. | | |
| 9 | Firm should put a file closure procedure in place to ensure good file closing hygiene, to include ensuring files are closed promptly, that all work has been dealt with appropriately and all undertakings discharged.<br>Firm should have a standard file closure form for use. | | |

| Recommended Actions | Satisfied / Completed? | Reference / Details |
|---|---|---|
| 10 Firm should appoint an appropriate person to undertake an analysis of file review data, at least annually, to identify any trends and make recommendations to address those trends as appropriate.<br><br>The review should include checking adequate numbers of file reviews are taking place.<br><br>COLP should check whether any trends constitute a serious breach of SRA rules and report where necessary. | | |
| 11 Firm should provide training on policy to all relevant staff, including why it is important to follow the policy and the potential risks to the firm if staff fail to do so.<br><br>Training on the policy to take place when staff join the firm and regular update training should also be provided.<br><br>Training should include guidance for file reviewers on how to properly complete a review. | | |
| 12 Firm should regularly review the File Review policy and audit the processes to ensure that they are effective and being followed. | | |

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