

Transaction Files Guidance

Introduction

1. **Overriding Principle 3** of the **CLC Code of Conduct** requires you to act in the best interests of your clients. You are not obliged to adopt the approach below, it is provided for those seeking guidance, setting out considerations to be borne in mind in determining how the **Client Outcomes** sought by that **Overriding Principle** might be delivered.

Procedures/Policies

2. Procedures/policies which can help ensure that all transactions are of a high, consistent, quality include (but are not limited to):
 - Acceptance of new matters, work allocation and file management procedure
 - **Client** Instruction Form
 - **Client** ID Form
 - **Client** Care Policy, Letter and Standard Terms and Conditions
 - Transactions File Checklists – please see below.

Checklists

Conveyancing transaction – procedure checklist

3. You may wish to consider creating a transaction procedural checklist. This is likely to include:
 - ID evidence (all transactions)
 - Capacity* of **client** established
 - Usage of sub files (sale)
 - Source of funds evidence (purchase)
 - Written estimate/costs and **disbursements** estimate (purchase)
 - All parties have signed Terms and Conditions (all transactions)
 - Provision of written estimate on inside cover of file if hard copy, or within electronic folder (sale)
 - Complete documentation supplied or explanation given (sale)
 - All parties have signed the Terms and Conditions (purchase)
 - Money received on account (purchase)

- Where required, mortgage lender has been advised as to the other conveyancer's ID (purchase)
- Correct copy documents and searches on file (both sale and purchase)
- Contract report sent/appropriate advice given (purchase)
- Mortgage report sent/appropriate advice given (purchase/remortgage)
- All Council for Mortgage Lenders Handbook/Building Societies Association requirements met (purchase/re-mortgage)
- Where undertakings given, correct procedures followed (all transactions)
- Transaction dealt with promptly and efficiently (all transactions)
- Prompt SDLT submission and payment (purchase)
- Lease requirements met (leasehold purchase)
- Prompt registration application and registration made within priority period (purchase)
- Prompt report of registration to **client** and mortgage lender (purchase)
- Proceeds of sale to **clients** (sale)
- No breaches of **CLC regulatory arrangements** (both sale and purchase)
- No breach of both seller's and buyer's responsibilities (both sale and purchase)
- No breach of both lender's and buyer's responsibilities (purchase)

Probate transaction – procedure checklist

4. You may wish to consider creating a transaction procedural checklist. This is likely to include:
 - Personal representatives established
 - ID evidence
 - Capacity* of **client** established
 - **Terms of Engagement** issued to all personal representatives
 - All representatives have signed **Terms of Engagement**
 - Written estimate of charges and **disbursements** on file and sent to client(s)
 - Beneficiaries established – according to the Will's provisions or following the Intestacy Rules as set out in the Administration of Estates Act 1925
 - Deceased's assets/liabilities (including those in joint name) established
 - Relevant companies informed of the death
 - Valuations obtained for all assets/liabilities
 - Valuation of estate established for tax purposes
 - Relevant Inheritance Tax Account (IHT) prepared
 - IHT calculated and paid, if applicable
 - Prepare application for Grant of Representation
 - Copy Grant lodged with all asset holders
 - All assets encashed/transferred and debts paid
 - Income tax affairs in order
 - All IHT paid and a clearance certificate obtained

- Administration Accounts prepared and sent to personal representatives for approval
- Estate administered in accordance with the Will, or the Intestacy Rules as set out in the Administration of Estates Act 1925
- No breaches of **CLC regulatory arrangements**

Wills transactions – procedure checklist

5. You may wish to consider creating a transaction procedural checklist. This is likely to include:
- ID evidence
 - Capacity* of **client** established
 - Where **undertaking** given, correct procedures followed
 - Full instructions taken
 - Written estimate on file and to **client**
 - **Terms of Engagement** issued
 - Copy of signed **Terms of Engagement** on file
 - Will signed in accordance with s9 Wills Act 1837 as amended by s17 Administration of Justice Act 1982
 - Explanation of will provisions and how they meet the client’s intentions
 - Confirmation from client that the will meets their intentions
 - Written confirmation regarding what will happen to the will and its storage, advising where, and for how long, it will be stored, the cost, and how it can be accessed
 - Where relevant, previous wills located and destroyed
 - No breaches of **CLC regulatory arrangements**

* Capacity of the **client** relates to vulnerability factors such as their mental health and the exertion of undue influence

Key Transaction Dates

Conveyancing

6. It may be beneficial to include the following key dates within the transaction checklist:
- Registration of a change at Companies House - within 21 days
 - Submission of an SDLT return and payment made – within 28 days
 - Registration of a purchase or new lease – within Land Registry search priority period
 - Completion of purchase – within 6 months of the issue of a Local Authority search and within the life of a mortgage offer
 - Land Registry cancellation dates relating to requisitions

Probate

7. It may be beneficial to include the following key dates within the transaction checklist:

- 6 months from date Grant is issued – claims can be made against the estate under the Inheritance (Provision for Family and Dependents) Act 1975
- 2 years from date of death – to prepare a Deed of Variation
- 1 year from death – executors’ year, interest paid on pecuniary legacies distributed after this date
- Statutory notices under Section 27 Trustee Act 1925

Risks

8. All individual files present potential risks. These may take the form of mortgage fraud/money laundering signs, involvement of a foreign jurisdiction or unique/unusual aspect of law (which may be beyond the competence of the individual), a transaction value which exceeds the firm’s insurance policy, or other. The example checklists provided at items 3-5 may aid you in identifying any inherent risks.

Good Practice

9. Staff are made aware of the broad range of potential risks and who they must report the risks to so that a determination can be made as to whether the transaction should proceed.
10. The files of each relevant person are subject to monthly, independent, review by sufficiently competent and experienced persons. The review findings are tailored (e.g. on process, advice quality) to the individual, centrally recorded and inform the individual’s staff development programme.

See also the Anti-Money Laundering and Combating Terrorist Financing, Acting for Lenders & Mortgage Fraud, and Management & Supervision Codes and Guidance.

File Retention and Ownership

11. Transaction files generally contain a mixture of papers and documents some of which belong to the **Client** and some to the body. In addition there may be other papers and documents which belong to another **Client**, for example a lender.
12. Documents that belong to the **Client**:
 - a) Those documents you have prepared for the benefit of the **Client** and which have been paid for by the **Client** either directly or indirectly, including:-
 - most attendance notes;
 - drafts;
 - copies made for the **Client**’s benefit of letters received by the **Licensed Conveyancer** or **body**;
 - copies of letters you’ve written to third parties contained in the **Client**’s file and used for the **Client**’s business, for example letters to banks, lenders, witnesses or potential witnesses. This does not include copies of letters written to the **Client** which you may keep.
 - b) Those documents prepared by a third party during the course of a matter and sent to you (other than those sent to you at the body’s expense). Examples are receipts and vouchers for **disbursements** made by or on behalf of the **Client** and letters received by the body from third parties.

- c) In the case of joint **Clients** these documents belong to the **Clients** jointly.
- d) In most cases it is not necessary to deliver up original documents. However:
 - some documents (such as Wills and Deeds) only have effect on production of the original; and
 - questions about the authenticity of a document may in some instances only be determined on production of the original.

13. Documents that belong to you:

- a) Those documents prepared by the body for its own benefit or protection, the preparation and production of which is not charged to the **Client**. They include:
 - copies of Communications written to the **Client**;
 - copies of Communications received by the body;
 - office journals;
 - computerised records;
 - copies of Communications to third parties but only if they are contained in a filing system of all Communications written in the office;
 - tape recordings of conversations;
 - entries in diaries;
 - time sheets;
 - books of account;
 - inter office Communications;
- b) Those documents sent to the body by the **Client**, the property of which was intended at the date of despatch to pass from the **Client** to you, including letters, authorities, and instructions written or given to you by the **Client**.

14. Where you acted for two or more clients and a request for the file or part of it is made by one of the clients (e.g. a lender), you should determine the ownership of the various papers in accordance with paragraphs 2 and 3 above. For example, in a **conveyancing** transaction there may be documents which:-

- Belong to the lender alone including the lender's instructions to the body, certificate of title and correspondence between you and the lender. The original may be released but a copy should be retained.
- Belong to the borrower **Client**, but which the lender is nevertheless entitled to see, as they relate to that part of the work where the lender and borrower can be said to have a common interest, such as deducing title. Examples are the contract, transfer and search certificates.
- Belong to the borrower **Client** that the lender is not entitled to see without the consent of the borrower **Client** (and for which a copying charge may be made).

Example Approach

You are not obliged to adopt the approach below. The following are provided only as good practice considerations:

15. To make a copy (without charge) for your own benefit of any documents released.
16. Where documents are requested with a view to a **claim** being made against you (in addition to your regulatory responsibility to notify insurers of the circumstances) you should:
 - not make any admission of liability;
 - deal with the matter in accordance with instructions issued by or on behalf of the insurers.
17. Where a file or information from a **Client** file is requested by a third party (such as the Police, HM Revenue and Customs or Trustee in Bankruptcy) to satisfy yourself (by the production of legal authority, preferably a court order) that the party making the request is legally entitled to the documents and information requested.
18. Where you intend to charge for copying documents (other than where any copying is made for your own benefit) you make a reasonable charge.
19. It is in your interests to ensure that the relevant **Terms of Engagement** authorise you:
 - to retain or destroy the contents of a **Client's** file or transfer the data onto another **Durable Medium**, since you may be liable for any loss incurred if the contents of a file are destroyed without the **Client's** consent; and
 - to provide copies (rather than originals) of documents requested unless the production of the document (such as a Will) is required for the document to have legal effect.

Destruction of file contents

20. After the relevant minimum retention period (identified at 9 & 10), and provided you have the **Client's** authority, you review the file to decide whether it may be safely destroyed. You might consider retaining separately and for a longer period the authority from the **Client**.
21. If the matter involved a mortgage, then it is likely you will want to take into account any **specific requirements** of the particular lender.
22. Items 9 and 10 of the Code provide minimum periods of time for which documents should be retained. Due to increasingly diverse relationships, people living longer, and growing challenges/disputes regarding a testator's wishes, you may wish to consider retaining will documentation for much longer. Some entities may store the original documentation for 50 years from its creation, until the individual making the will would have reached 100 years of age, or indefinitely. It is likely to prove beneficial to record all contact pertinent to the transaction/service provision e.g. **client's** intentions, family dynamics etc. in case a (**probate** or other) dispute should arise in the future.