
Insurance terms prevail

Any retention period stated under your professional indemnity insurance policy must prevail over the retention period set out herein. This note is for guidance only in the event an insurance policy is silent on the matter.

Background to this guidance

As a matter of law, many of the papers on a client file belong to your client. The CLSB is currently consulting on entity regulation arrangements (Authorised Body) to be introduced April 2015, under which it proposes a rule that Authorised Bodies retain a client's file for a minimum of six years after closure.

Six year retention

Until this rule is introduced, CLSB would request that it is voluntarily followed. If not, it is good practice to agree with your client the right to destroy the file after a specified period of time either at the outset of the instruction or before placing the file into storage.

Client consent

In the absence of any agreement, you need to assess the risk involved if you destroy files without your clients' consent. This might involve, for example, a possible claim on your indemnity policy and a complaint to the Legal Ombudsman on the grounds that you have provided an inadequate professional service. It may therefore be advisable in these circumstances to ask your insurer's views.

Scanned files

Many Costs Lawyers are faced with limitations in terms of space and as a consequence look to remove files from the office that are classified as closed matters. As an alternative, you may wish to consider whether it would be more practicable for you to hold scanned copies of these client files to help address the risks identified above.

Confidentiality

You have a continuing duty of confidentiality to former clients; make sure when destroying files you do so without breaching that confidentiality.

Other points you should consider

- Original documents should not be destroyed without the owner's consent.
- The likely statutory limitation period for any action which may arise.
- You must retain certain documents for specified periods (e.g. for VAT purposes or under the Money Laundering Regulations).

END