



Transaction Files Code & Guidance

Transaction Files Code

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies regulated by the **CLC** must comply with this Code. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

Outcomes-Focused

The **Code of Conduct** requires you to deliver the following **Outcomes**:

- Each **Client's** best interests are served; (**Outcome 3.1**)
- **Clients' affairs** are treated confidentially (except as required or permitted by law or with the **Client's** consent). (**Outcome 3.6**)

Appropriate standards of document provision help you deliver these **Outcomes** and require you to act in a principled way:

1. **Act in the best interests of your Clients. (Overriding Principle 3)**
2. You disclose **client** information only as the **Client** has instructed (or as required by the **CLC's regulatory arrangements** or by law), keeping effective records of any disclosure you make. (**CoC OP3e**)

You must also comply with the following **specific requirements**:

File

3. When a request for a transaction file, or part of it, is made on behalf of a **Client**, lender or third party you must determine the ownership of the various papers in the file and provide the

person making the request only with the documents they own or are entitled to, or entitled to only with the **Client's** permission.

4. Where the **Client's** permission is required you must not provide the papers to the person making the request until you have obtained the **Client's** consent or been served with a court order in appropriate terms.

Joint retainers – joint Clients

5. Originals are handed to one **Client** only with the consent of the other **Client**.
6. You provide each **Client** with a copy without charge.
7. You release copies to third parties only with the consent of all **Clients**.

Joint retainers –Client and lender

8. You may charge a lender for a copy of a document if you require the borrower **Client's** consent to provide the lender with a copy.

Retention of file contents

9. You retain the contents of files relating to all matters for a minimum of six years, except those relating to:
 - other conveyancing matters (other than the sale of property) for a minimum of fifteen years
 - wills for a minimum of six years after the testator has died, and
 - probate matters for a minimum of six years from the end of the executor's year.
10. Consideration should be given on a case by case basis as to the appropriate date of destructions for the contents of files relating to:
 - deeds of gift
 - gifts of land
 - transfers at an undervalue
 - right to buy where funds came from someone other than the purchasing tenant(s)
 - lifetime gifts.

Transaction Files *Guidance*

1. 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.
2. 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.
3. 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**.

4. 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 (eg 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:

1. To make a copy (without charge) for your own benefit of any documents released.
2. 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.
3. 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.

4. Where you intend to charge for copying documents (other than where any copying is made for your own benefit) you make a reasonable charge.
5. 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

6. 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**.
7. If the matter involved a mortgage, then it is likely you will want to take into account any **specific requirements** of the particular lender.