# Helpsheet: Documents and files – ownership and retention

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## Introduction

The approach to the retention of documents and files (referred collectively as records) is an area which often causes significant questions for a firm. Despite what might at first seem to be a relatively straightforward topic for a practice, it is in fact one of the most complex.

The topic requires careful consideration of the interaction between several factors including legal jurisdiction, legal ownership, contract law, professional indemnity insurance conditions, tax legislation and data protection legislation amongst others.

Due to the complexity of factors that can come into play, the aim of this helpsheet is to introduce the issue, with high-level guidance. It is strongly recommended that legal advice should be sought if there is any doubt over the application of information in this helpsheet.

## General comments

It should be remembered that, depending on the nature and location of the firm’s practice and each assignment, the laws of several jurisdictions could be applicable to its work. For example, a firm may be based in Scotland, engaged to prepare UK tax returns for a company with a registered office in Switzerland. It should not be assumed that the same retention provisions apply to all of your clients.

It is worth noting that some professional indemnity insurers include a retention clause in the policy and failure to observe this may invalidate your cover.

Whilst, as set out below, there are some general rules regarding ownership and retention of records, these may be subject to the agreement of the parties. It is recommended that provisions relating to ownership and retention of records are included within engagement terms between the firm and client. The ICAS Engagement letters Helpsheet contains specimen documents including a terms and conditions schedule (Part 3) which provides example wording. Clearly, whatever has been agreed with a client should be respected in practice.

## Ownership of records

Ownership of records will depend on several factors. A distinction must be drawn between documents that are prepared for the client and those that are prepared by the firm for their own use. It will also include the relationship capacity in which work is being carried out, as well as what, if anything, has been agreed in writing between the parties.

The general rules are:

* if acting as a principal when creating the document, the document belongs to you.
* if acting as an agent, the document belongs to the client.

To provide further guidance, [Appendix 1](#Appendix1) provides examples of typical scenarios encountered by firms regarding file ownership.

## Archiving

Over the course of a client’s engagement with the firm, numerous records are likely to be handled. The volume and number of these will be a factor of the assignments undertaken and the length of relationship between the client and the firm. Firms will typically store and order documents within files which can either be hard copy files or part of electronic document storage systems.

Irrespective of whether records are held electronically or in hard copy format, there will be a need to archive periodically. While recovery of information from electronic archiving may well be easier, and storage costs are not as high as for physical records, the discipline of archiving records and ensuring only current information is readily available aids the efficiency of a firm’s work.

It is essential to ensure that crucial records are not archived; the records archived should be just those items which are unlikely to be referred to and which are unlikely to need to be retrieved in urgency.It should be remembered that archived records are still considered as being processed for the purpose of Data Protection legislation and would therefore be caught by any subject access request made by a client.

Typical file types and factors to consider when archiving include:

### Correspondence files

This would normally be retained in strict chronological order and would normally be archived immediately upon its replacement when it is full. It is essential that documents such as signed engagement letters and signed accounts are not filed in the correspondence file.

### Accounts files

Accounts working papers can normally be archived after two years so that the current and previous working file is easily available should it be required. Firms would normally have one such file open per year, unless the client is particularly small.

### Audit files

Audit working papers can normally be archived after two years so that at any one time the current and the previous working file is easily available.

### Permanent/Tax files

The nature of these files is such that the content requires to remain accessible. However, because of this and the nature of the documents included in the file, the file(s) can become bulky and numerous. It is generally signed accounts and signed returns which add to the bulk of such files. Once a tax return, and its associated accounts, are beyond the date at which HM Revenue & Customs can open an enquiry (normally one year after the date the return was filled) then they could be archived.

### VAT files

These files would normally be completed in VAT return order with one section per return. They are therefore easy to thin, possibly taking the returns relating to the current and previous accounting periods from the front of the file and archiving the remainder.

### PAYE files

A new file should be opened for each tax year and the old file passed for storage in February following the end of the tax year. Queries regarding the P35 are less likely to result after this date.

As part of the process of archiving, consideration should be given to how destruction of records will be carried out in the future. For example, if an external archive supplier is being used to store archived records and they will also destroy records in accordance with the firm’s instructions sometime later, you may wish to consider how the archiving can be organised to facilitate destruction in due course without the need to recall the records from storage for further review. Similarly, when archiving electronic records the archive may be organised in a way which best facilitates destruction in time.

## Retention and destruction of records

Firms should carefully consider the length of time for which they will hold records and should record the timescale for each record in a retention policy. Consideration requires to be given as part of the timescales set out in document retention policy to several factors. These include for example, legal ownership, contract law, professional indemnity insurance conditions, and tax legislation amongst others. Where personal data is held then the Data Protection Act 2018 contains specific principles including the requirement that personal data is not held for longer than is necessary, taking account of any timescale requirements in legislation.

A firm may be asked to hold a wide variety of records for a client and each record may require a different retention policy. If there is any doubt over a specific document, then it would be advisable to seek appropriate advice on whether the document should be retained.

Accounts working papers for a sole trader or a partnership are tax documents, and as such, must normally be retained for five years from 31 January following the tax year of assessment (or 6 years from end of accounting period if the return is not for a tax year) (s12B TMA 1970).

For professional indemnity insurance purposes, the record-keeping requirement is stronger still even where the statutory period of prescription and limitation of action (five years in Scotland; six years in England and Wales) may appear to have passed, and so it may not always be appropriate to destroy the files.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (2017 MLRs) also impose obligations on firms in relation to the retention of personal data demonstrating the verification of client identities. Regulation 40 sets out that such personal data should be deleted five years following the completion of a particular transaction or the cessation of the client relationship.

According to the particular circumstances, the prescriptive period may not actually have passed. The period of limitation runs from the date when the breach occurs or from the date that the alleged negligence became apparent or from when the alleged negligence causes the harm. In cases involving fraud, the period does not run until the injured party has discovered the fraud, even though this might be many years after the completion of the assignment.

There should be a clear document retention policy recorded for the firm which all staff should be made aware of and ensure they are familiar with. It is important to ensure that the timescales in the policy are met, with regular reviews and destruction of papers which should no longer be retained.

Where records are no longer to be retained consideration is again required to the ownership of documents. Where a document belongs to a client then it would be best practice to offer to return it before destroying it.

Destruction of records should only take place with the approval of a principal in the firm, or someone senior with delegated authority. Where files are to be destroyed these should be reviewed to ensure that any vital documents are extracted prior to destruction.

To preserve confidentiality and comply with obligations in relation to personal data under Data Protection legislation, the destruction of records should always be done securely.

[Appendix 2](#Appendix2) provides some guidance and suggestions on document retention periods.

## Firm cessation, merger or sale

Special considerations are required in relation to the retention and destruction of records where a firm ceases. Considerations concerning legislative requirements, tax legislation, data protection legislation and contractual positions amongst others are as relevant on cessation of a firm. As a result, the general position set out above remains applicable.

While it may be understandable that there would be a desire not to have to retain records, not least because of the issue of storage and its possible associated costs, appropriate arrangements are likely to have to be made to continue to store records for a considerable period after the cessation of the firm.

Where a firm is ceasing on merger or sale of a practice then a practical solution is often to arrange that the merged or purchasing firm to take over the records. Careful consideration should be given to agreeing in writing the conditions relating to storage and access of the records, normally as part of the sale and purchase agreement.

## Useful links

[Helpsheet: Rights of access to documents and files](https://www.icas.com/professional-resources/practice/knowledge-centre/general-practice-manual/Documents-and-file-access-rights.docx)

[Helpsheet: Exercising a right of lien](https://www.icas.com/__data/assets/pdf_file/0004/268348/Lien-helpsheet-August-2023.pdf)

[Helpsheet: Engagement letters](https://www.icas.com/__data/assets/word_doc/0008/583046/Engagement-letters-helpsheet-Complete.docx)

## Further information and assistance

Further assistance and information can be obtained from the Practice Support team. You can contact them through the Practice Support section of the [ICAS Technical helpdesk](https://www.icas.com/contact-us/icas-technical-helpdesk).

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All information is believed to be correct at the time of publication.

## Appendix 1 – record ownership

To provide further guidance, the table below provides examples of typical scenarios encountered by firms to illustrate who will generally be considered to own certain records:

|  |  |  |
| --- | --- | --- |
| **Scenario** | **Type of records** | **Ownership** |
| **Correspondence** |
| Communications between a firm and their client | Letter received by the firm from the client | Firm |
| File copy of letter sent by firm to the client | Firm |
| Communications between firms and third parties | Correspondence to and from a firm acting as agent for the client | Client |
| Correspondence to and from a firm for the purpose of obtaining specialist advice for the client | Client |
| Correspondence to and from a firm acting as principal | Firm |
| Internal file notes | File notes made where member is acting as agent (e.g. tax compliance work) | Client |
| File notes made reflected in the fees charged to client | Client |
| File notes made other than in relation to work done for the client | Firm |
| File notes made where firm is acting as principal | Firm |
| **Audit** |
| Preparation of audit report whether carried out under statutory provisions or not | Any documents prepared by member solely for purpose of carrying out his duties as auditor | Firm |
| Audit report | Client |

|  |  |  |
| --- | --- | --- |
| **Scenario** | **Type of document** | **Ownership** |
| **Accounting services** |
| Preparation of accounting records | Accounting records | Client |
| Preparation of financial statements (including management accounts) from client’s records | Financial statements | Client |
| Draft/office copies of financial statements | Firm |
| Preparation of financial statements (including management accounts) from incomplete records where not instructed by client to work from those records | Schedules | Firm |
| Financial statements | Client |
| Analysis of banking accounts prepared by member | Reports, memos, or notes | Client |
| Drafts of above | Firm |
| Other accountancy | Records prepared by the member which are required by law to be kept by the client | Client |
| File copies of any documents including drafts | Firm |
| **Tax services** |
| Preparation and submission of accounts, returns and computations or VAT returns to HM Revenue & Customs (‘HMRC’) and other tax compliance work | Accounts, schedules and computations, correspondence between the member and HMRC in relation to the same | Client |
| Agreement of the client’s tax liabilities including those following an enquiry or investigation | Any documents | Client |
| Preparation of a report for a client to submit to HMRC in connection with an enquiry or investigation | The report and supporting schedules | Client |
| Papers used in the preparation of the report | Client |
| Provision of advice to a client on tax liabilities arising out of an enquiry or investigation | The report and supporting schedules | Client |
| Papers used in the preparation of the report | Firm |

|  |  |  |
| --- | --- | --- |
| **Scenario** | **Type of document** | **Ownership** |
| Tax consulting, advice, or planning | Letters, reports, or documents of advice | Client |
| Drafts, internal file notes, etc | Firm |
| **Consulting and advisory work** |
|  | Reports and other end product of a firms work | Client |
| Other papers produced as part of the engagement but not provided to the client | Firm |
| **Insolvency** |
| Appointments as administrator or liquidator  | Books, records and documents of the insolvent entity prior to appointment | Insolvent entity, held by appointment holder as agent |
| Books, records and documents of the insolvent entity after appointment | Insolvent entity, held by appointment holder as agent |
| Books, records and documents of the office holder3 after appointment | Office holder |
| Appointments as administrative receiver (or receiver in Scotland) | Books, records and documents of the insolvent entity prior to appointment | Insolvent entity, held by appointment holder as agent |
| Books, records and documents of the insolvent entity after appointment | Insolvent entity, held by appointment holder as agent |
| Books, records and documents of the office holder3 after appointment | Office holder |
| Appointments as trustee | Books, records and documents of the debtor prior to date of sequestration | Vest in trustee |
| Books, records and documents of the office holder3 after appointment | Office holder |
| Appointments as nominee or supervisor | Books, records and documents of the insolvent entity prior to appointment | Insolvent entity, unless specifically covered under the voluntary arrangement |
| Books, records and documents of the office holder3 after appointment | Office holder |
| **Scenario** | **Type of document** | **Ownership** |
| Appointments as Monitor | Books, records and documents of the insolvent entity prior to appointment | Insolvent entity |
| Books, records and documents of the insolvent entity during moratorium period | Insolvent entity |
| Books, records and documents of the office holder3 after appointment | Office holder |
| Court reporter | Report to court | Court |
| Other papers produced as part of the engagement but not provided to the court | Firm |

Notes:

1. Where the client has specifically engaged for drafts to be prepared, then draft copies of end products will belong to the client as the draft is one of the products required by the client.
2. Where information required to be maintained under statutory provision has been prepared by the firm, that information will belong to the client. For example, schedules which could reasonably be described as accounting records prepared during the preparation of financial statements for a company incorporated under the Companies Act 2006, such as a nominal ledger or journal entries which are not otherwise incorporated back into the company’s own accounting records are likely to belong to the client.
3. Books, records, and documents of the office holder would include, for example, strategy documents, case reviews, estate bank statements and supporting vouchers, working papers, correspondence with advisers, etc.

## Appendix 2 – document retention periods

The following table provides some guidance and suggestions on document retention periods. Please note that these are only suggestions and circumstances may justify shorter or longer retention periods.

|  |  |
| --- | --- |
| **File type** | **Retention period** |
| Audit files and working papers | Audit regulations require current year, plus a further six years.Preferable to keep two years files in hard-copy form. |
| Client permanent files | 20 years after client relationship ceases |
| Accounts preparation working papers | Current year plus six further years. |
| General tax papers including correspondence | Current year plus six further years, then return to client. |
| Original documentation | Retain as long as instruction requires, and then return to client. |
| Information relating to client’s chargeable assets and gifts | Indefinitely. |
| Documents of title (e.g. leases) | 12 years after interest in property ceases and documents are not required by new owner, landlord etc. |
| PAYE files | Current year plus six further years. |
| Insolvency-related files | Current year plus six further years. |
| Office papers – General office correspondence and time records | Five years. |
| AML Customer Due Diligence documentation | Per Regulation 40 of 2017 MLRs – 5 years after ceasing to act for the client. |
| Investment Business records | IB regulations required documents to be kept for at least six years from the date they were made. This remains the case post-Financial Services and Markets Act (FSMA). Such information should be kept in a form that is readily available for inspection and easily printed.Under the FSMA, firms authorised directly by the FCA should refer to the FCA’s Sourcebook for specific retention periods. Firms holding DPB licences are expected to retain documents for a period of not less than six years (4.06 DPB Handbook). |
| Records relating to pension transfers and opt-outs | Should be kept indefinitely (see old IB Regulations 3.35 and FCA Sourcebook as appropriate. |