

# Considering the options for e-Filing

## A discussion paper by 3Kites

In recent years, a large number of firms have invested time and money deploying matter-centric document management systems. These projects are often accompanied by the hope that they will seamlessly move the lawyers from the ubiquitous (and almost always incomplete) paper file to a single, complete electronic file accessible to all working on the matter. However, this remains a forlorn hope whilst the project is treated as a technical challenge with insufficient emphasis on the business change considerations that must be addressed before such a fundamental shift in working practices can be achieved.

In part, this reflects the problems that internal teams often face when gathering requirements from the business, ie that their analysis is incomplete because of the barriers between lawyers and the support staff that they employ. However, it also reflects some technical barriers that hamper the move to an electronic file and which are readily latched upon by those lawyers who are most resistant to change.

It is important to note that the key issue here is what the firm regards as the 'master' file – the full record of the matter. It will be a long time before the legal world dispenses with paper altogether. Hard copy is often easier to work with in the here and now, especially when dealing with multiple inter-related documents. What we mean here by e-filing is not paperless working (although a reduction in the amount of paper used is a helpful by-product), but a move towards regarding the electronic file as the master record both for ongoing matter management and for future archiving and storage.

This paper looks at both the reasons why firms should now be questioning their reliance on paper (or physical) master files, and the barriers against adoption of an electronic file. If you would like further information about e-Filing or the consultancy services provided by 3Kites, please contact Paul Longhurst on +44 (0)7785 254909 or at [paul.longhurst@3kites.com](mailto:paul.longhurst@3kites.com).

## Reasons for moving away from the paper file

When more than one lawyer is working on a matter, there is a risk that multiple, inconsistent files will be created making it more difficult for any one practitioner to identify a complete record of the matter from start to finish. Additionally, the paper files of any individual lawyer, whether working alone or as part of a team, may be incomplete in respect of un-filed emails and draft versions of finalised or evolving documents. The electronic master file (EMF) is not immune from filing deficiencies, but it is easier to add items that already exist electronically to an EMF than it is to identify items for filing, print these off and then add them to *all* the paper files that have been created for a matter.

If a single master paper file is used, regardless of the additional files that may be held by members of a matter team, the team needs to know where it is and be able to rely on it being up to date. This inhibits access to the file for members of the team when the file is in use for, say, a client meeting (ie only one person can use it at a time), or when members of the team are unexpectedly operating away from their usual location (e.g. when travel disruption or bad weather prevents them from coming into the office). An EMF would be available so long as the systems that host it remain available (this being a well trodden technical path, albeit one that carries a cost reflecting the levels

of resilience built in), potentially allowing lawyers to access matter-related documents and emails from any computer 24 hours a day... even when it's snowing.

Paper files can be difficult to search through exhaustively and the exercise, being time consuming, can often be farmed out to secretaries or juniors who are only likely to find exactly what they are asked to (eg finding all documents that specifically mention 'colour' but missing those containing 'tint' and 'hue'). This, coupled with an often incomplete file, can lead to incomplete results. Searching through an EMF using comprehensive searching tools is not only quicker (and therefore more likely to be undertaken by lawyers), but more accurate in that it will find all occurrences of a word or phrase and, with some search tools, can also surface conceptually related documents containing terms such as 'tint' and 'hue' in the example above. This reduces risk for firms, albeit with the same caveat as above that filing still needs to be accurate with the EMF in order for this to work.

Extending the point about searching through paper files, this becomes even harder when casting back over a number of similar matters already completed by the firm for the most appropriate precedent content to use on a new matter of the same type. Lawyers will be able to remember the most relevant matters that they have worked on, but may have little or no knowledge of some of the other matters undertaken by the firm. Consequently, the material they retrieve may not be the best available within the firm. This may also reflect a deficiency with the firm's know how collection but, either way, will be much easier when using EMFs that have been categorised consistently by a carefully considered inception process. Such an approach will allow searching by word or phrase across specific types of matter over a set period of time and, as above, this will be faster and more accurate using comprehensive searching tools.

Lastly, there is the storage and retrieval of paper archives. Regardless of whether hard copy files are stored in a firm's own office space or offsite, there is an increasing cost to storing (and retrieving, where offsite) them. As well as looking at minimising the costs of office space taken up by filing cabinets, it makes sense for e-filing projects to consider the records management implications in order to maximise efficiencies from the tight integration of both solutions.

## Barriers to the adoption of e-Filing

One of the challenges firms face in moving towards an EMF for its matters is the lawyers who, like many of us, are unwilling to change their working practices despite acknowledging the compelling case for moving to an EMF policy. Their reasons may range from the logical ("I'm too long in the tooth to learn something so radically different and be effective with it") to the illogical (which may reflect a lack of comfort with solutions which appear to be overtly technical). If these lawyers have the influence to scupper your project, then you may have to wait until the force of opinion around them helps to move things forward. However, it may be best simply to work around those who are reluctant to change and have some manual intervention from secretaries in order to bridge the gap between their existing approach and the new world.

In our experience, some of these lawyers may also be raising valid issues, so it's best not to categorise them simply as difficult and ignore all their points. One such partner that we interviewed (and who was adamant that they would not use an EMF) gave some examples of hardcopy documents that *would* have been hard to maintain throughout a matter in electronic format. In this particular case, the solution was to acknowledge that these documents would evolve on paper, but that they would ultimately be scanned into the EMF.

A related point was raised by an advocate of the EMF who pointed out that they worked on a large reference document in hardcopy with multiple and evolving hand written notes and cross references. Whilst this document was not worth scanning in at the end of the transaction (and certainly not after every change), it was useful as a record and so we suggested it be referenced from within the EMF as a paper record with a physical location. None of this is rocket science; we were just acknowledging that there were sensible exceptions to the purists' view of an EMF which, by their inclusion, helped to make the whole idea more practical.

An easy mistake to make with an e-filing project (as with many projects that impact the business directly) is to launch it with a set of rules and required working methods that are simply impractical and which do not take account of the realities of different types of legal practice. Lawyers are of course trained to spot flaws in an argument and once they find even a small issue which makes the rules unworkable they will undermine the credibility of the project as a whole and have a perfect excuse for continuing to work as they always have, resulting in non-compliance and project failure.

The most difficult barrier to overcome with existing technology is that of reading through large documents on screen. People (not just specifically lawyers) are often most comfortable reading large documents or multiple documents in hard copy because they can refer to several pages at the same time and mark these up as they go, transferring their changes to the electronic document afterwards. Whilst there is currently no complete technological solution to this problem (multiple screens are expensive and electronic paper is still evolving), we would recommend people continue to work in this way. This does not affect the fidelity of the electronic document or the EMF it is a part of, but is rather a manual drafting practice that is both effective and efficient.

Where these efficiencies start to come into question is with client meetings or court appearances when lawyers want access to (key parts of) the full master file in hardcopy. One option may be for key documents to be maintained in a paper file for appropriate matters, with a process being defined to provide access to this file and restrict its duplication. This should not be seen as the master file, but as a summary that can support lawyers during client meetings, court appearances and the like. Alternatively, lawyers could be encouraged to print out only what they need for each particular meeting, and then to update the EMF depending on the outcome of the meeting and finally to shred the hard copy items.

Maintenance of summary files, and indeed of the EMF (including access rights, where these are not automatically open to all), can be seen as additional administrative overheads. This is where we edge into another area altogether – utilisation of secretaries. We would suggest the use of more capable secretaries as 'matter managers' whose role would be to support the lawyers working in a number of ways such as file (EMF and, where necessary, summary) and diary maintenance. Diary maintenance relates to the use of a single Outlook calendar, accessible by all working on a matter, which holds key milestones and dates. The matter manager role would offload some of the matter administration undertaken by lawyers, whilst also helping to support the move to an EMF.

## Practical steps for implementing e-Filing

When approaching an e-filing project, we would recommend treating it first and foremost as a business change project which is likely to have a number of technical solutions... and being realistic enough to accept that none of these solutions is likely to provide a complete answer in the current state of technological evolution. This means talking to the lawyers about their real needs and issues (like access to the file when they are stuck at home in the snow) rather than the IT solutions they currently have or would like, and being able to set expectations about what is likely to be possible and what is not.

It also helps to create an understanding of what ideal would look like, but to understand the gaps between this and what is possible so that the project can anticipate future developments in the available technology in order to move the solution ever closer to the ideal with later phases. Whilst creating this ideal, it is important not to be closed to objections from the business as this could alienate those who might otherwise fall in behind such an initiative.

Creating an EMF involves careful consideration of how incoming material should be added to the file, including how it should be profiled, and by whom. A clear policy on matters such as filing attachments to incoming emails (as separate documents, or leaving them attached to the email, or both), and processes for scanning incoming hardcopy is needed. These issues may require a review of wider processes, such as the way incoming post is dealt with and the location of scanners or multi-function scanner/printers.

It is vital to provide credible, practical and easily-applied guidelines which demonstrate that the realities of legal practice have been taken into account in the project. Getting these guidelines right is far more important to the success of the project than most firms realise.

Finally, we would suggest piloting the approach with one or two practice groups in order to rectify teething problems before rolling it out more widely. Careful selection of these groups should provide endorsement of the EMF from those who were always likely to be advocates and are now seen as successful users of the new solution, to those who were more sceptical but have been won over through their ongoing and sympathetic involvement with the project.

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