



Signing Controller-Processor Agreements with Solicitors' Firms

Purpose:	To advise the profession in relation to the signing of controller-processor agreements with solicitors' firms
Scope of application:	All practising barristers and chambers
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Status and Effect:	Please see the notice at the end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.

It has come to the Bar Council's attention that some solicitors' firms have sought to require individual barristers or chambers to enter into a data processing contract under Article 28 of the GDPR, in advance of the GDPR entering into effect.

For the avoidance of doubt, self-employed barristers are data controllers of their client's data. They are not data processors. Self-employed barristers should be aware that it is only in very limited circumstances (such as when on secondment to work at a solicitor's firm) that they are likely properly to be considered to be data processors and for it to be appropriate to enter into an Article 28 contract with a solicitor as the data controller. Even then, in some circumstances (akin to those set out in Example 23 of WP29 Opinion 1/2010 below) the barrister may need to exercise their independence, and in those circumstances will be a data controller. Care should be taken to ensure that an appropriate clause is included in any such agreement. This is because a barrister's role is not to act as a sub-contractor on the solicitor's behalf, merely processing data accordingly, but is instead to provide independent objective specialist advice and advocacy. It is almost always up to the barrister to determine what information to process and obtain in order to perform the work, and each barrister has their own professional responsibilities to fulfil.

Barristers should also be aware that the terms of a proposed data processing contract may conflict with their obligations under the Code of Conduct, and in particular with the barrister's duty to the court (CD1, rC4 and rC16), and with obligations to act independently in the best interests of the client, not to permit the professional client to limit the barrister's discretion as to how the interests of the client can best be served (CD4, rC3.5 and rC15), and to keep appropriate records (rC87.2). The terms of a data processing contract could for example give rise to difficulties for a barrister in the event of a disagreement with the solicitors, or if a lay client is considering whether to change solicitors or changes solicitors.

In view of the nature of the barrister's role and the potential conflict with the barrister's duties under the Code of Conduct, both the need for and content of any proposed data processing contract should be very carefully considered. **It will not be appropriate for self-employed barristers to sign such an agreement for work carried out in the course of normal practice.**

For further information, please refer to:

- a) the Bar Council's [GDPR Guide for Barristers and Chambers](#)
- b) paragraphs 25–27 in the Information Commissioner's Guidance: [Data controllers and data processors: what the difference is and what the governance implications are](#) (which are still relevant, although need to be updated for GDPR), and
- c) Examples 21 and 23 in [WP29 Opinion 1/2010](#).

Important Notice

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