



Note on Confidentiality and Data Protection Issues with regard to Student Placements

Purpose:	To address confidentiality and data protection issues arising with regard to student placements
Scope of application:	All practising barristers, but concentrating on the self-employed
Issued by:	The Ethics Committee
First issued:	November 2017
Last reviewed:	November 2017
Status and effect:	Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.

1. This Note should be read with reference to the Guidance on Mini-pupils at http://www.barcouncil.org.uk/media/392050/mini-pupils_updated_may_2017.pdf, the relevant content of which it summarises and applies to the case of student placements.
2. There are two particular problems associated with the disclosure of information to students who are minors (U18s):
3. The material may be confidential to your client; or may be subject to obligations akin to confidence e.g. the obligation (owed to the Court) to use a disclosed document "*only for the purpose of the proceedings in which it is disclosed*": see CPR Rule 31.22.
4. The use of information may be subject to data protection restrictions under the Data Protection Act 1998. The restrictions apply to all personal data

(i.e. data *reasonably capable* of being related to a specific individual), and are particularly stringent in relation to sensitive personal data¹.

Confidentiality

5. It is doubtful that students under the age of 18 can be bound by duties of confidence². Absent very specific client agreement, therefore, a student under the age of 18 should not be allowed to see material confidential to the client. This is so, regardless of whether the terms of any engagement or instructions agreed with the client would otherwise permit disclosure of such material to mini-pupils and the like: those terms are likely to be construed as permitting onward disclosure of confidential information only on enforceable conditions of confidence.
6. It is also open to serious question whether allowing a mini-pupil to see a disclosed document is "*use for the purpose of the proceedings in which it will have been disclosed*", within CPR 31.22 (or similar). Allowing a student under the age of 18 to do so is at least as problematic.
7. The better view is that U18s should not be allowed to see, or hear about, material that is confidential to the client, unless the client has specifically permitted it; and should not be allowed to see or hear about the content of documents disclosed by other parties, unless that information has since become public.
8. However once such material has been read to or by the court, or referred to at a hearing held in public, no problem arises. To the extent that documents have been read to or by a public court, or information has been discussed in such a court, it may be discussed and shown to a mini-pupil or student.

¹ Sensitive personal data means data consisting of information as to—

- (a) the racial or ethnic origin of the data subject,
- (b) his political opinions,
- (c) his religious beliefs or other beliefs of a similar nature,
- (d) whether he is a member of a trade union,
- (e) his physical or mental health or condition,
- (f) his sexual life,
- (g) the commission or alleged commission by him of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

² See Chitty on Contracts (32nd ed, 2015) para 9-033; *Proform Sports Management Ltd v Proactive Sports Management Ltd* [2006] EWHC 2903 (Ch); [2007] Bus LR 93 at [35]-[41].

Data protection

9. The problems here are even greater. Data protection obligations relate to not just the lay client's personal data, but also to data capable of being related to any other identifiable person. Fair processing obligations are owed to all such persons. Disclosure of such data to a mini-pupil or student is likely to require the data subject's specific and informed consent.
10. Where data relates to the lay client, specific lay client agreement is required and will usually suffice (although you will need to exercise judgment as to whether that such consent can safely be obtained via a professional client). In the case of sensitive personal data, the lay client's consent must be explicit; and the notice/ request to the lay client may well have to identify precisely what data is to be disclosed and to whom, precisely.
11. But it is highly likely that case papers will include personal data which relates, identifiably, to persons other than the lay client e.g. an opposing party, a witness, potential witness; indeed any person. Disclosure of such data to a student or mini-pupil will almost certainly involve "processing" of that data. The conditions for fair processing are difficult to meet in circumstances where personal data will be passed to an U18. (Even in the case of non-sensitive data, it might be difficult to maintain that disclosure without confidentiality protections does not "*prejudice the rights and freedoms or legitimate interests of the data subject*": see paras 2.7 and 2.20-2.22 of the Guidance on Mini-Pupils.) Where the relevant data includes sensitive personal data, disclosure of non-client data will be impossible, consistently with the relevant data protection obligations.
12. The implications of this for student placements are serious. The only safe advice that can be given is that U18s cannot be allowed to see case papers unless they are restricted to (i) publicly available materials (including materials that have been read by a court or discussed in court); (ii) materials obtained from and relating only to the client, for the disclosure of which specific client agreement has been obtained; but (iii) documents disclosed by other parties must not be given to the student (unless they have become public). Anything beyond this involves a high degree of risk that the disclosure to the student may be considered unacceptable.
13. As will be apparent from the foregoing, discussion of, and attendance at, appeal hearings are much less likely to be problematic.

14. Anonymisation of documents will usually not be effective to avoid the difficulties of confidentiality and data protection because students will often be able to work out to which individuals those documents refer.

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. It is not “guidance” for the purposes of the BSB Handbook I6.4 and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views of advice expressed in it. It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see [here](#).