



The Bar Council

Devilling, outsourcing, and the use of litigation assistants

Purpose:	To assist barristers regarding the rules and their ethical obligations relating to the devilling of work between barristers, outsourcing and the use of litigation assistants
Scope of application:	All self-employed barristers
Issued by:	The Ethics Committee
First published:	February 2016
Last reviewed:	July 2026
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.

Introduction

1. A barrister instructed to do or provide any work of any kind will remain personally responsible to the client for the proper performance or provision of that work. However, there may be occasions when a barrister can properly engage a third party to assist with aspects of that work, either through the practice of devilling or through an outsourcing arrangement for the supply of support services. Many of the ethical duties that arise apply equally to both devilling and outsourcing, while others are context specific (as set out below).

Definitions under the Code

Devilling

2. '**Devilling**' is the long-established practice among self-employed barristers by which one barrister obtains the assistance of another, usually a more junior, barrister to carry out work to help the first barrister discharge his instructions.
3. The BSB Handbook defines devilling as follows:

“Devilling” means where a self-employed barrister (“A”) arranges for another barrister (“B”) in the same chambers to carry out work for A on the basis that A will be responsible for the payment of B’s remuneration for such work and will be responsible to the client for the work as if it were their own. “Devil” and “devils” will be construed accordingly.’

4. This definition embraces all arrangements under which a self-employed barrister (“A”) engages another barrister (“B”) to assist him or her (i.e. the first barrister) in carrying out work for which he or she is responsible to the client. Such arrangements may cover work in the nature of preparing a first draft of a document, researching a point of law, obtaining copies of relevant authorities, preparing a chronology, organising papers or summarising evidence: in short work of any kind to help the first barrister carry out his or her instructions.
5. The definition is arguably wide enough to encompass the delegation of oral advocacy by A to B (e.g. attendance at a short procedural hearing). The Ethics Committee is not however aware that advocacy services have ever been “devilled”, and it does not consider that they can be: A cannot ensure that oral advocacy will be performed by B as well as if he or she had performed the advocacy himself or herself, nor can A ensure that B’s judgments and decisions taken in the course of an oral hearing will be the same as those that A would have made.
6. The BSB Handbook definition also restricts devilling to such arrangements made by barristers *in the same chambers*. The Ethics Committee does not believe that is historically accurate, although devilling arrangements between barristers in different chambers have become very rare. The Ethics Committee understands that the BSB made a deliberate decision to restrict the definition in this way.
7. The term ‘devilling’ will be used here in accordance with the definition set out in the BSB Handbook. It will be assumed that A is the instructed barrister and B his or her, usually more junior, assistant – although there is of course nothing to prevent a more junior barrister engaging the assistance of one more senior.

Outsourcing

8. ‘Outsourcing’ is the term used in the BSB Handbook to refer to situations in which you engage a third party to supply support services. It includes, for example, the engagement of a paralegal, a litigation or research assistant, and external clerking or administration services, to assist you to carry out your work.
9. Rule C86 in the Handbook reads as follows:

‘Where you outsource to a third party any support services that are critical to the delivery of any legal services in respect of which you are instructed:

- .1 any outsourcing does not alter your obligations to your client;*
- .2 you remain responsible for compliance with your obligations under this Handbook in respect of the legal services;*
- .3 you must ensure that such outsourcing is subject to contractual arrangements which ensure that such third party:*
 - .a is subject to confidentiality obligations similar to the confidentiality obligations placed on you in accordance with this Handbook;*
 - .b complies with any other obligations set out in this Code of Conduct which may be relevant to or affected by such outsourcing;*
 - .c processes any personal data in accordance with your instructions;*
 - .d is required to allow the Bar Standards Board or its agent to obtain information from, inspect the records (including electronic records) of, or enter the premises of such third party in relation to the outsourced activities or functions;*
 - .e processes any personal data in accordance with those arrangements, and for the avoidance of doubt, those arrangements are compliant with any relevant data protection laws.*

10. 'Legal services' are non-exhaustively defined in the following terms:

"Legal services" includes legal advice, representation and drafting or settling any statement of case, witness statement, affidavit or other legal document, but does not include:

- a) sitting as a judge or arbitrator or acting as a mediator;*
- b) lecturing in or teaching law or writing or editing law books articles or reports;*
- c) examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;*
- d) communicating to or in the press or other media;*
- e) giving advice on legal matters free to a friend or relative or acting as unpaid or honorary legal adviser to any charitable benevolent or philanthropic institution;*
- f) in relation to a barrister who is a non-executive director of a company or a trustee or governor of a charitable benevolent or philanthropic institution or a*

trustee of any private trust, giving to the other directors trustees or governors the benefit of their learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust;

g) early neutral evaluation, expert determination and adjudications"

11. There is no guidance in the Handbook as to what is meant by 'support services', or as to when such services will be 'critical to the delivery of any legal services in respect of which you are instructed'. It is suggested that 'support services' will generally be services which are not a core part of the 'legal services', but which support you in providing those services, and are aspects of what you would need to do, and could properly do, yourself (either personally or with the involvement of your clerks) in order to provide legal services. On that basis, it is suggested that the word 'critical' relates to the need for and/or importance of the support service in the delivery of particular legal services in respect of which you have been instructed, or in enabling you to provide legal services generally.

The effect of rC86

12. It is important to note two things about outsourcing under rC86 at the outset:
- a. Rule C86 does not of itself permit outsourcing – it merely lays down requirements which apply only if and when outsourcing is otherwise permissible, both in law and under the Code of Conduct.
 - b. Compliance with rC86 in relation to any outsourcing does not mean in itself that you have complied with your duties under the Code, or with your obligations (both under the Code and in law) in relation to confidential information and data protection. These other duties are considered in later sections below.
13. When considering whether it is appropriate to engage in outsourcing, you will have to consider the best interests of your client (CD2). It may be more cost effective or necessary for exigencies of time for photocopying to be done by a printing firm or research done by a law graduate than for you to do it yourself. However, the outsourcing rules do not permit you to delegate to others work you should be doing yourself. This might most obviously be the case where your contract expressly prohibits outsourcing of any part of the work you have been instructed to do, but there may be other situations in which your legal and/or ethical obligations require you to do the work personally or 'in-house' in any event.
14. You must not enter into any outsourcing arrangement which has or is intended to have the effect of circumventing any of your professional or regulatory obligations to your client. Nor do the outsourcing rules permit you to outsource

work that you would not be allowed to do yourself. For example, if you are not authorised to conduct litigation, then you cannot engage a third party to do anything that involves the conduct of litigation (for example, the issuing or service of proceedings). If you are authorised to conduct litigation and you are considering asking unauthorised persons to assist you to conduct litigation, you must read the case of [CILEX & Ors v Mazur & Ors \[2026\] EWCA Civ 3693](#). Drawing from this case, recent BSB [guidance](#) on page 4 says, *“If you are authorised to conduct litigation, you should ensure that any unauthorised person assisting you does not undertake any reserved activities and that you retain responsibility for the conduct of litigation, with appropriate arrangements being in place for the proper direction, supervision and control of the litigation.* Further guidance on what the ‘conduct of litigation’ involves can be found in the BSB’s [guidance on Conducting Litigation](#), and also in the Bar Council’s document entitled, [Direct Access and Conduct of Litigation](#). The BSB is expected to issue guidance on what proper direction, supervision and control should look like soon. In the meantime, you may find it helpful to consider guidance issued by CILEX Regulation¹⁰ and the SRA¹¹ appreciating that it applies in a slightly different context.

Duties

15. In order to decide whether devilling or outsourcing is permissible and appropriate, there are several duties you will need to bear in mind:
 - a. You must act in the best interests of each client (CD2).
 - b. You must act with honesty and integrity (CD3).
 - c. You must not mislead, or cause or permit to be misled, any person to whom you supply, or offer to supply, legal services about any of the matters set out in rC19. These include who is legally responsible for the legal services (rC19.3), who will actually carry out the work involved (rC19.2), and the basis of charging for that work (rC19.2).
 - d. You must keep the affairs of each client confidential (CD6). This means that you must protect the confidentiality of each client’s affairs, except for such disclosures as are required or permitted by law, or to which your client gives informed consent (rC15.5).
 - e. You will owe a legal duty of confidence to your client.
 - f. You will owe legal duties to your client as a data controller for the purposes of the Data Protection Act 1998. You may also owe such duties to others, e.g. other parties to litigation or to a transaction, and potential witnesses.
 - g. You must comply with the terms on which you have accepted instructions, which may include provisions which bear on whether you are entitled to outsource support services and/or on whether client consent is needed to any particular outsourcing of support services. For examples, the terms may prohibit you from outsourcing any part of the legal services, or may require you to seek consent before doing so.

16. In the light of those various duties, whether or not it is appropriate and permissible for you to engage in devilling or outsourcing, whether your client's express consent will have to be obtained to any particular outsourcing, and whether or not your client must be told the details of the arrangement (including what fee is payable to the third party), will depend on the nature of the services being outsourced, the extent to which information will be disclosed to the third party, and all the circumstances. These will vary from case to case.

Duties of the devil

17. As a devil, you will be working for and on the instructions of A, the instructed barrister. Your client, according to the BSB Handbook definition will be A rather than the lay client (but see below and Rule C15.5 as to the duties that apply to you **as if** the lay client was your own client). You will be paid by A, on whatever basis or terms you will have agreed with A, and will have no right to be remunerated by A's client. Such terms as are agreed should be made or evidenced in writing.
18. On this basis, the devil will not generally owe all the duties of a barrister to the lay client. However, as instructions and other documents received from A will be received in confidence, you will owe the same duties of confidence to the client as does A. This applies regardless of whether the disclosure of information to you may have involved a breach of confidence by A. While you do not need a client-barrister relationship for the duty of confidentiality to exist, the BSB Handbook at gC46 makes this expressly clear:

'If you are a pupil of, or are devilling work for, a self-employed barrister, Rule C15.5 applies to you as if the client of the self-employed barrister was your own client.'

Rule C15.5 provides: *'Your duty to act in the best interests of each client (CD2), to provide a competent standard of work and service to each client (CD7) and to keep the affairs of each client confidential (CD6) includes the following obligations:*

..

.5 you must protect the confidentiality of each client's affairs, except for such disclosures as are required or permitted by law or to which your client gives informed consent.'

19. Furthermore, your obligation to provide a competent standard of work to your client (in this case, both barrister A and in relation to the duty of confidentiality the lay client **as if** they were your own client) will remain. CD5, also, provides that "You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession", and you should therefore also have regard to the best interests of the lay client while carrying out

your work for A. Ultimately, however, the full ethical duties of the barrister, including to protect the best interests of the lay client (CD2) will rest with A.

Types of arrangement

20. The following examples have been considered by the Bar Council's Ethics Committee, and may assist you in considering the application of rC86.

Pupils

21. gC129 specifically provides that the outsourcing provisions [rC86] do not apply where you are instructing a pupil to undertake work on your behalf.
22. Nor would a pupil in receipt of pupillage funding who undertakes work for their pupil-supervisor, or for another member of chambers fall within the scope of devilling. It is implicit in the 'devilling' definition that the arrangement is one under which it is intended that B will be separately remunerated by A for the work done. Such arrangements have not, historically, been considered "devilling". (The position of probationary tenants, commonly known as "third-six" pupils, is however more complex: they do not fall within the definition of "pupil" in the BSB Handbook, and may well be considered "devils", particularly if they are not in receipt of pupillage funding and are being remunerated on the basis of work done for each member of chambers.)

Direct engagement

23. Guidance gC128 makes it clear that the outsourcing provisions [rC86] only apply when you engage the third party. If your client enters a separate agreement with the third party then rC86 does not apply. You may, however, have responsibilities to your client if you recommend the third party or if you have a financial interest in the arrangement. These are considered below under the heading 'Conflicts of Interest'.

Research assistant

24. You may decide to engage a research assistant to assist you in advising your client on the law, or in preparing a skeleton argument. It is not clear whether this would be a 'support service':
- If this is a 'support service', then the research will be reflected in your final advice, or your final argument, so would be critical to the legal services you are providing to your client. This would be permissible under rC86 provided the appropriate contractual arrangements are put in place.
 - If legal research is not a 'support service', then what is involved will be a delegation of part of the legal services which you have been instructed to provide. If this is permissible under the terms of your contract and as a matter of law, then you are likely in practice to have to comply with the

requirements of rC86 as a minimum, and your duties under the Code may require you to go further (e.g. as regards explaining to your client who will actually carry out that part of the legal services covered by your instructions).

In-house services

25. Guidance gC127 says that rC86 applies to the outsourcing of clerking services. By implication, it does not apply to clerking services provided in-house by clerks who are employees of yours or of your Chambers [N.B. You will be responsible in any event for any services provided 'in-house': see gC66, which provides that 'You are responsible for the service provided by all those who represent you in your dealings with your client, including your clerks or any other employees or agents'.]
26. Clerking services are not defined in the Handbook but in the context of 'outsourcing' (where what are involved are 'support services that are critical to the delivery of' your legal services) are likely to include administrative support such as taking bookings, liaising on a barrister's behalf with clients, courts and opponents and negotiating fees and contract terms. They may well also include fee collection. These are only examples of the sort of administrative services that are likely to be caught.
27. Therefore, if you or your Chambers engage administrative assistants or clerks who are self-employed and contract with Chambers on the basis that they are not employees, the arrangement must comply with the outsourcing provisions within rule C86 if they are providing services which are critical to enabling you to provide legal services to clients.

Secretarial services

28. Secretarial services engaged in order to produce type-written versions of opinions or court documents drafted or dictated by you will be caught by the outsourcing provisions [rC86].

Conference facilities

29. By way of contrast, it is thought unlikely that the mere provision of conference facilities (and/or any refreshment services during a conference) by a third party would be regarded as being "critical to the delivery of any legal services". On the other hand, the position may be otherwise if the conference facility providers are responsible for the transmission or temporary safe-keeping of case documents

which are necessary for the purposes of delivering your advice or discussing the matter with the client or witness at such conference.

Photocopying

30. You may be instructed to prepare the trial bundles. After you have prepared a master copy, you might then wish to outsource the photocopying rather than do it yourself. If you have been instructed to produce the trial bundles, rather than simply the master copy for duplication by the client, then the copying of the trial bundles will be critical to the legal services which you have been instructed to provide. Outsourcing the copying would be permissible under the rules provided you comply with rC86. Most professional companies operating in this field ought to be able to provide terms and conditions which comply with the requirements of rC86; but if not, then you will need to agree such terms at the outset (see below).

Personal responsibility

General

31. In the context of either a proposed devilling arrangement or a proposed outsourcing arrangement, a barrister instructed to do or provide any work of any kind will remain personally responsible to the client for the proper performance or provision of that work, regardless of whether he or she obtains the assistance of another in preparing to deliver or provide it. See Rule C20:
- 'Where you are a BSB authorised individual, you are personally responsible for your own conduct and for your professional work. You must use your own professional judgment in relation to those matters on which you are instructed and be able to justify your decisions and actions. You must do this notwithstanding the views of your client, professional client, employer or any other person.'*
32. Guidance gC65 explains that this is not intended to prevent you delegating or outsourcing discrete tasks which someone else is well-equipped to perform, but that if you do so, you remain responsible personally for that work.
33. In addition, Core Duty 7 requires you to provide a competent standard of work and service to each client: see, too, gC38. You would be well advised to proceed on the basis that you remain responsible for all aspects of the work done or produced by anyone to whom you outsource or devil that work. This will include, for example, its content and quality, the timing and manner of its delivery, and the quality of service provided; and you should assume that the standard of work and service provided will need to be the standard which your client could reasonably expect of *you* if you had done the work yourself. This will also include any ethical obligations which may be engaged (e.g. confidentiality).

Devilling

34. In short, you must supervise and scrutinise B's work, including any decisions or judgments made, with sufficient care and diligence that you can properly adopt the work provided to the client as your own.

Outsourcing

35. Rules C86.1 and C86.2 make it clear that outsourcing does not alter your obligations to your client and you remain responsible for complying with your obligations under the Handbook.
36. Subject to any relevant terms of your contract with your client, any wrongful act or omission by the third party to whom you have outsourced work involving 'legal services' is also likely to give grounds for a claim by your client against you personally. Such work is, by definition, part of the work which you have been instructed to perform for your client, and the rules require you to retain personal responsibility for that professional work. This does not mean that you cannot limit your liability in lawful and appropriate ways, but it will ordinarily mean that you cannot simply exclude your own liability for that part of your work which you outsource to the third party. The same may or may not apply to other support services: this will depend on their nature and their effect on your delivery of legal services to your client.
37. The more care you take in selecting the person to whom to outsource support services, in imposing contractual obligations on that person, and in managing the relationship with that person, the stronger your position is likely to be if something goes wrong.

Contractual requirements

Outsourcing

38. It is clear from rC86.3 that you must have a contract with the third party, and that your contract must satisfy the requirements of that rule regarding confidentiality (rC86.3.a), data protection (rC86.3.c and .e), and allowing BSB access to information or premises (rC86.3.d).
39. Rule C86.3.b also requires the contract to ensure that the third party will comply with any relevant obligations in the Code of Conduct. This is a potentially very wide obligation and it may be difficult to predict in advance whether, and if so which, obligations might be engaged in any particular case. It is considered that in most cases it will be sufficient to include a clause in the contract requiring the third party to comply with any obligations in the Code that are relevant to or

affected by the work which the third party is instructed to carry out. It would also be prudent to include a copy of the Code or a web link to it in the contract.

Client consent / notification

Client consent

40. An important question arises as to whether you must obtain your client's consent to the devilling or outsourcing of work.
41. The starting point here will be the terms upon which you will accept or have accepted instructions.
42. Clause 8.3 of the Bar's Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012 provides that: *'The Barrister may delegate the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any delegate as if they were the acts, omissions, defaults or negligence of the Barrister'*¹. This therefore would appear to authorise devilling or other delegation of work without separate client consent.
43. In contrast Clause 6.1 of the COMBAR/CLSS terms (version 3²) make the following provision: *'The Barrister will be solely responsible for providing the Services under the Agreement. The Barrister may only involve another barrister or other third party in the performance of the Services under the Agreement if the Barrister obtains the Solicitor's prior consent, that consent not to be unreasonably withheld.'* The Joint Guidance on those terms advises that *'If a barrister needs assistance or if the barrister considers that it would be sensible for someone else to be engaged in relation to the work, the barrister should discuss this with the solicitor'*.³ That discussion will include discussion of the basis on which the fees of the other barrister or third party are to be charged, and who is to be responsible for paying them.
44. Many instructions are however still accepted on the 'traditional basis' i.e. on the basis of the terms formerly set out in Annexes G1 and G2 to the old Code of Conduct of the Bar (8th ed.), or variants of them. There is no express provision in

¹ The explanation issued by the Bar Council about these Standard Terms clarifies, at paragraph 42, that *"this provision is to allow devilling or preparation of drafts by pupils; it is not intended to allow other types of delegation of the work required."* But the provision itself is not so limited.

² The current version at the time of the last review of this document.

³ The Joint Guidance continues: *"This is not, however, intended to prevent a barrister making proper use of a pupil who is in training with the barrister's chambers. Nor is it intended to prevent a barrister from seeking the assistance of another barrister in order, for example, to check certain points of law or to locate comment on a particular authority..."* It is not altogether clear how this is consistent with Clause 6.1.

those terms in relation to the devilling or delegation of work. The Ethics Committee does not consider that a prohibition on the involvement of another barrister is to be implied; and that the position under these terms is therefore similar to that under the Bar's Standard Contractual Terms.

45. In every case therefore in which you are considering outsourcing or seeking the assistance of a devil, you should check the terms on which you have accepted instructions, to ensure that such delegation of work is permitted. You should also consider your obligations as a data controller, which will require you at least to notify your client of the proposed disclosure of personal data to a devil or outsourcing supplier and may, where special categories of personal data are concerned, require explicit consent to such disclosure: see paragraphs 22, 23 and 29 to 38 below.

Client notification

46. Even if there is no requirement to obtain the consent of your client, it may be that the client should be *informed in advance* that you intend to outsource or obtain the assistance of a devil. Consideration must be given to Rule C19:

'If you supply, or offer to supply, *legal services*, you must not mislead, or cause or permit to be misled, any person to whom you supply, or offer to supply, *legal services* about:

- .1 the nature and scope of the *legal services* which you are offering or agreeing to supply;
- .2 the terms on which the *legal services* will be supplied, ***who will carry out the work and the basis of charging***;
- .3 who is legally responsible for the provision of the services; ..." (*emphasis supplied*)

47. A client may be misled by omission (e.g. by not being informed of an intention to outsource or devil work) as well as by commission. It may be so misled even if the terms on which the work has been accepted themselves *permit* devilling or outsourcing.
48. Whether you need for this reason to tell the client about your intention to outsource or engage a devil may depend on the scope of the work that you intend to delegate. For example, if you were intending to devil *some central or critical aspect of the work* and were to carry out that intention without disclosing it to the client, there is a possibility that the client might have been misled as to who was in substance to carry out the work.
49. Services provided by barristers are personal services, in which the identity of the service provider is, ordinarily, an important element. The client's usual

expectation, even in a case where delegation is permitted, will be that the skills and experience of the barrister instructed will be fully brought to bear on all critical aspects of the instruction.

50. Unless therefore you can conscientiously assert that you will so supervise and/or scrutinise the work of B that you will be able properly to describe the final product as your own, you should disclose your intention to obtain the assistance of a devil.
51. However, if the intention is to delegate only minor, preliminary or incidental parts of the work required – e.g. organizing papers, preparing a chronology, obtaining copies of relevant authorities, or researching a defined point of law for recent developments – then it is likely that you can properly delegate that part of the work without having to disclose that delegation to the client.
52. In any case of doubt, the intention to outsource or engage a devil should be disclosed to the client, to avoid any risk that the client might be misled.

Data protection consent / notification

53. There is, however, a second basis that may give rise to the need to obtain client consent / notification, and that concerns data protection. For many tasks, it is likely that you will need to disclose some personal data to the devil or outsourcing supplier. The circumstances in which this may be permissible are summarised in the data protection section below. This may require you to obtain your client's consent. If so, and particularly if that consent needs to be explicit, then you might be able to obtain this by giving – and obtaining your client's explicit agreement to – a sufficiently detailed explanation of what devilling or outsourcing would involve, and what personal information might be disclosed for that purpose, if you were to engage a devil or outsourcing supplier; but you would need to judge whether you have obtained sufficient consent to every disclosure of personal data that you propose to make in each case. You would also need to consider whether this was sufficient for you to be able to disclose personal data to a devil or outsourcing supplier which concerns third parties (such as witnesses and other litigants).
54. In the absence of any necessary consent from your client, you would need to consider very carefully whether you could justify a particular disclosure as being 'necessary' for a purpose listed in Arts. 6(1) or 9(2) of the UK GDPR.⁴ The meaning of 'necessary' is a question of law on which the Bar Council cannot advise you, but you would be wise to exercise considerable caution if you do not

⁴ The UK General Data Protection Regulation came into effect 31 January 2020. The text may be found at <https://www.legislation.gov.uk/eur/2016/679/contents>.

have your client's agreement or consent to a particular arrangement. You should also exercise considerable caution regarding any personal data relating to third parties.

Confidentiality

55. If you have accepted instructions on terms that permit the delegation of the work required, that will implicitly allow you to communicate confidentially, and to the extent necessary, the confidential content of your instructions to a devil or outsourcing supplier. Communication of the content of the instructions, for the purpose of assisting you to carry out your instructions, will not involve any breach of confidence.
56. However, if the terms you have accepted do *not* permit such delegation (cf. Clause 6.1 of the COMBAR/CLSS terms), it is likely to be a breach of confidence to communicate confidential information to a devil or other delegate without the client's informed consent.⁵ Clause 10.2 of the COMBAR/CLSS terms (version 3) is explicit in this regard:

'10.2 The Barrister may only disclose Information if and to the extent that:

- (a) disclosure is required by law;*
- (b) disclosure is authorised by the Solicitor or Lay Client;*
- (c) disclosure is required by the professional rules applicable to Barristers practising in England and Wales;*
- (d) the Information is already in the public domain other than as a result of breach by the Barrister of the Barrister's obligations; or*
- (e) disclosure is made to a pupil or mini-pupil of the Barrister.'*

57. The fact that Clause 10(e) permits disclosure to a pupil or mini-pupil emphasises that disclosure to a devil or outsourcing supplier is not permitted. Such a disclosure would also in those circumstances be a breach of the requirement for lawful processing under the Data Protection Act 2018 ("DPA") and the UK GDPR, insofar as the information disclosed is personal data.

Data protection

58. In many cases, your instructions will include personal data relating both to your lay or public access client and to third parties. As a controller of that data under the UK GDPR and DPA, the circumstances in which you will be able to use that

⁵ This document does not touch on the separate question of whether an instructed barrister can disclose the confidential content of his instructions to a colleague, to the extent necessary to discuss particular points or issues of difficulty. Cf. Code of Conduct 8th edition para 702.

data or disclose it to anyone else, including a devil or outsourcing supplier, are restricted to the circumstances set out in the UK GDPR and the DPA.⁶

59. For many tasks, it is likely that you will need to disclose some personal data to the devil or supplier. That disclosure will amount to “processing” the data. Art. 5(1) of the GDPR requires, amongst other things, that any personal data is processed lawfully, fairly and in a transparent manner, and for specified, explicit and legitimate purposes. You will need to establish (and be prepared to demonstrate) one of the specific legal grounds for processing in Art. 6. That means in effect you will need to be able to justify the devilling or outsourcing as being “necessary” (in the sense of being proportionate to the need) for one of the purposes set out in Arts. 6(1)(b)–(f),⁷ or you will have to obtain from your client and anyone else whose personal data is shared “freely given, specific, informed and unambiguous” consent “by a statement or by a clear affirmative action” (for the purposes of Art. 6(1)(a)) or be sure that the processing falls within the exemptions from these requirements set out in the Schedules to the DPA, see in particular Sch. 2 para. 19. The conditions set out in Art. 6(1) include “(f) *processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.*” This condition may be applicable in appropriate circumstances, but you will need to consider whether your interest in providing legal services for clients using a devil or outsourcing outweighs the rights of the persons whose personal data is involved. You will also need to make appropriate reference to the possibility of disclosure to a devil or outsourcing supplier in your GDPR privacy notice.⁸
60. If the data is ‘special category data’⁹ then you will *additionally* need to show either that one of the bases in Art. 9(2)(b)–(j) applies, or that you have *explicit* consent (within the meaning of Art. 9(2)(a)) from your lay client and anyone else whose personal data is processed. Art. 9.2(f) permits processing of special category data if processing is “necessary for the establishment, exercise or defence of legal

⁶ See generally, the General Data Protection Regulation (GDPR): Guide for Barristers and Chambers available at <http://www.barcouncilethics.co.uk/documents/gdpr-guide-barristers-chambers/>

⁷ It might well not be ‘necessary’ to disclose personal data to the devil for the named purposes if the data can, for example, sensibly be redacted from any instructions before passing them on.

⁸ You may find it helpful to refer to the practical suggestions made about this in the context of mini-pupils (see section 2 of the Mini-pupils guidance)

⁹ Such as information about a person’s race, ethnic origin, politics, religion, trade union membership, genetics, biometrics (where used for ID purposes), health, sex life or sexual orientation.

claims.” [In recent guidance from the ICO](#) the meaning of “legal claims” has been explained. This guidance recognises that “processing necessary for obtaining legal advice [or] establishing, exercising or defending legal rights” falls within the “legal claims” exception. This means that it is not limited to situations where contentious proceedings are underway or imminent.

61. If the data is or relates to criminal convictions and offences or related security measures (under Art. 10 UK GDPR) then you will need to be sure that the processing falls within the lawful conditions provided in s. 10 DPA or falls within a relevant exemption. DPA Schedule 1 Part 3 para. 33 permits processing of personal data relating to criminal convictions and offences or related security measures where the processing “(a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), (b) is necessary for the purpose of obtaining legal advice, or (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.”

62. As regards explicit consent, guidance from the Information Commissioner¹⁰ states that:

‘Explicit consent is not defined in the UK GDPR, but it is not likely to be very different from the usual high standard of consent. All consent must involve a specific, informed and unambiguous indication of the individual’s wishes. The key difference is likely to be that ‘explicit’ consent must be affirmed in a clear statement (whether oral or written). The definition of consent says the data subject can signify agreement either by a statement (which would count as explicit consent) or by a clear affirmative action (which would not). Consent that is inferred from someone’s actions cannot be explicit consent, however obvious it might be that they consent. Explicit consent must be expressly confirmed in words. Individuals do not have to write the consent statement in their own words; you can write it for them. However you need to make sure that individuals can clearly indicate that they agree to the statement – for example by signing their name or ticking a box next to it. If you need explicit consent, you should take extra care over the wording. Even in a written context, not all consent will be explicit. You should always use an express statement of consent.’

63. If the data of third parties is included in the potential disclosure to the devil or outsourcing supplier, then it is unlikely to be practicable to get consent from such third parties (in particular for reasons of confidentiality and privilege), and you will only be able to pass on their data if you can rely upon one of the other legal grounds for processing in Art. 6 (and Art. 9, if the data is special category data) or if the data is criminal conviction or offences data under Art. 10, as explained

¹⁰ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/consent/what-is-valid-consent/>

above, or if any of the exemptions from these requirements set out in the Schedules to the DPA apply. You should exercise considerable caution about whether this is the case, certainly if you do not have your client's agreement to the arrangement. Indeed, it may be impossible to outsource or use a devil without disclosing this fact to your client.

64. Your privacy notice should be made available, and making it accessible on a website is helpful, though of course, third parties are likely to be completely unaware that the processing is being carried out, so this is of little use. For this reason, processing personal data of third parties will almost always have to be justified under lawfulness conditions and/or the exemptions, rather than by relying on consent.
65. In addition, as a data controller you are required to maintain appropriate organisational and technical measures to ensure that the data is kept secure. You must also ensure that the devil or outsourcing supplier will keep the data secure. The processing of the data by the devil or outsourcing supplier must also be carried out pursuant to a formal data processing contract, which will be either a controller-to-controller agreement or a controller-to-processor agreement.¹¹ Which agreement is appropriate will depend on the control which you wish to exert over the performance of the work. If you are content for the devil or outsourcing supplier to exercise their professional judgment about how the work is carried out then, then a controller-to-controller agreement is likely to be most appropriate. If there is no discretion as to how the work is done, then a controller-to-processor agreement is likely to be most appropriate. The latter must include a requirement that the devil or outsourcing supplier is to act only on instructions from you as data controller and include all the other obligations referred to in Art. 28(3).
66. The disclosure of data to a devil or outsourcing supplier may also be prohibited by the terms and conditions of your retainer. Similarly, if your client objects to the arrangement, any disclosure for such purposes is unlikely to be considered fair or lawful.
67. It will be clear from the brief outline above that your data protection obligations raise questions of law on which the Bar Council cannot advise you, so you will need to take your own view on these questions, and on the steps you may need to take in order for you to be able to disclose personal data fairly and lawfully to

¹¹ Assistance with completion of these agreements can be found on the ICO website at <https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/data-sharing-a-code-of-practice/data-sharing-agreements/> and <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/contracts-and-liabilities-between-controllers-and-processors-multi/what-needs-to-be-included-in-the-contract/>

a devil or outsourcing supplier. If in doubt, you should not disclose personal data, particularly special category personal data, to a devil or outsourcing supplier.

Position of the devil

68. If the material to be disclosed to you includes personal data within the meaning of the UK GDPR, then you will have to agree to be subject to the same obligations in relation to that data as you would in a case of your own (i.e. in which you have received instructions directly from a professional or public access client). Whether you are acting as a data processor rather than a data controller will depend on the terms of the agreement to carry out the work. If the terms are so constrained as to leave you no discretion about how you carry out the task, then it is likely that you will be a data processor. However, if the terms leave room for you to exercise your own discretion about how to carry out the task, then it is likely that you will be a data controller. In any event, you should ensure that you keep the data secure and follow the instructions of A in relation to such data, which may include more onerous obligations than you consider necessary. You may not be entitled to disclose the information except as directed by A or as required by law. You must enter into a contract with A, which is either a controller-to-controller agreement or a controller-to-processor agreement which includes all the obligations referred to in the UK GDPR Art. 28.3. Which agreement is appropriate will depend on the terms under which you agree to provide the work.

Non-discrimination

69. You must not discriminate in your choices of devils or third party to whom to outsource work on any unlawful or improper basis: CD8 and Rules C12 and C110-C112.

Public access

General

70. Where you have accepted public access instructions, but wish to engage a devil or outsource work, you must take care to ensure that your contractual arrangements with the client permit the arrangement. As presently drafted, the Bar Standard Board's Model Client Care Letters do not allow any delegation of work: they all specify that "*I personally* [i.e. the instructed barrister] *will do all the work needed under this arrangement*". If necessary, separate client consent to the arrangement must be obtained.

Devilling

71. There is no impediment to a devil accepting work from A, which A has undertaken to provide or carry out under public access instructions, even if the devil is not entitled to accept public access instructions. It is A alone who will have accepted the public access instructions, and who must comply with the Public Access Rules.

Conflicts of interest

Devilling

72. It is important that the devilling of work is properly recorded in each barrister's Chambers' records, so that potential future conflicts of interest or duty can be identified at the outset and avoided.

Outsourcing

73. The potential for a conflict of interest will arise when (a) you outsource work to someone with whom you have a close professional or personal relationship, or (b) you outsource work to someone with whom you have a financial relationship, such as a service company in which you or your Chambers has an interest. The same will be true if you do not engage that third party yourself, but you suggest or recommend a particular third party to your lay client.
74. There is no prohibition on using the services of a third party in these circumstances. Indeed, your client may well be relying on your experience to identify someone whom you know personally to be well-equipped to provide the necessary service. In order to avoid any conflict of interest, however, you must ensure that your client is not misled as to any interest or relationship you have in or with the third party, and the following would at least be good practice:
- a. You should only engage such a third party in good faith and if it would be in the best interests of your client to do so.
 - b. The arrangement should be transparent.
 - c. Your relationship with or interest in the third party may be a factor relevant to whether it is appropriate to disclose your intentions and that relationship or interest to your client, and to give your client the opportunity to object to or question the outsourcing of that work, the identity of the third party, and the proposed terms: see above. In some situations, you may be *obliged* to do this (legally or ethically).
 - d. You should keep a record of any communications or discussions with your client about those matters.
75. It would be good practice to take a similar approach if you recommend that your client use or engage a particular third party, such as a service company or

paralegal, directly. In addition, you should also ensure that you comply with the following provisions in the Code of Conduct:

rC81 -

If you have a material commercial interest in an organisation to which you plan to refer a client, you must:

.1 - tell the client in writing about your interest in that organisation before you refer the client; and

.2 - keep a record of your referrals to any such organisation for review by the Bar Standards Board on request.

rC83 -

If you refer a client to a third party which is not a BSB authorised person or an authorised (non-BSB) person, you must take reasonable steps to ensure that the client is not wrongly led to believe that the third party is subject to regulation by the Bar Standards Board or by another approved regulator.

76. Where you make a recommendation in a situation covered by paragraph 71 above, you may also have legal obligations along similar lines.

Good practice, due diligence, and safeguards

General

77. The possibility of outsourcing or devilling is a point to consider when you are first offered instructions. If you do intend to outsource or devil some tasks, or wish to have the option to do so, then you should be open about this and discuss any concerns that your clients (lay or professional) may have about it. You should then include appropriate provisions in the terms on which you accept the instructions.

78. If you wish to outsource or devil certain work at a later stage, then even if you do not need your client's consent to this, you should consider whether it would in any event be appropriate to give your client the opportunity to object to or question the devilling or outsourcing of that work, the identity of the third party, and the proposed terms. Whether this would be appropriate in the case will depend on the circumstances, including the nature of the proposed arrangement, the terms on which you accepted instructions and any discussions that you may have had about this with your clients at the outset.

79. You should not engage a third party to whom your client has reasonable objections.

Outsourcing

80. In deciding whether and to whom to outsource work, you should take appropriate steps to enable you to be confident that the third party is suitable, competent and reputable. In other words, you should consider carrying out some due diligence. Depending on the nature of the service in question, this might include some or all of the following, by way of example:
- a. Investigations into the background of the service provider.
 - b. Obtaining references.
 - c. Identifying any applicable ethical standards or codes of conduct/practice to which the provider should adhere.
 - d. Identifying any relevant qualifications.
 - e. Looking for quality assurance systems or certification.
 - f. Reviewing the provider's systems for identifying, resolving and managing conflicts, and for protecting confidentiality.
81. You should consider whether the outsourcing involves any particular risks which you ought to explain to your client.
82. If you are considering outsourcing to a provider outside the UK, and even more so outside the EU, then you should consider what additional risks might apply, what laws and ethical standards may apply to the relationship (which may be different from those which would apply within the UK or EU), the practicalities of enforcement against the provider, and the effect of these issues on your duties under rC86.3.
83. You should ensure that the terms you agree with the service provider, and any systems that you and they have in place, enable you:
- a. to manage the relationship effectively;
 - b. to supervise the work as and where necessary;
 - c. to ensure that the provider does not put you in breach of your ethical obligations;
 - d. to ensure that you know how problems will be resolved; and
 - e. to protect your client's interests if the provider fails to perform.
84. You should keep records of the work outsourced and the terms on which it was outsourced. It might also be wise to record the reasons for the outsourcing, including the reasons for choosing the particular third party, particularly where the work involves 'legal services' or you have a close connection with the third party.

Fees, charging, payment, tax, and insurance

Charging

85. If you have accepted instructions offered at a set or fixed fee, no separate considerations arise from the outsourcing or involvement of a devil. You will charge the set fee, regardless of the basis on which you may have agreed to remunerate the devil.
86. If however a fixed fee has been agreed and accepted on the basis that the work is *likely* to take *you* a certain number of hours, but you do not spend those hours on the work because you outsource or engage the assistance of a devil, there is a serious risk that the client will have been misled about the basis of charging; unless you were to disclose in advance your intention to obtain that assistance.
87. If you have accepted instructions on the basis that you will be paid at an hourly rate (cf. Clause 11.2 of the Bar's Standard Contractual Terms) this will – absent specific agreement – prevent you from claiming any fees for any time spent by a devil or other delegate. The BSB Handbook at gC59 indicates as follows: *'If you are a self-employed barrister, you would, for example, likely be regarded as having breached Rule C19 if you charged at your own hourly rate for work done by a devil or pupil. Moreover, such conduct may well breach your duty to act with honesty and integrity (CD3).'*
88. In these circumstances, i.e. if there has been agreement on your remuneration at an hourly rate, but you would nonetheless want reimbursement of some or all of a devil's or outsourcing fees, the client's prior agreement to pay, additionally, for any outsourced work or work done by the devil must be sought.
89. You would not ordinarily be required to explain in detail what expenses you may incur in providing your services. This applies to in-house costs (such as staff costs), to commonly incurred expenses (such as travel and hotel expenses), and to other incidental expenses (e.g. photocopying charges that you incur), *unless* you intend to make an additional or separate charge for any of these. On the other hand, if you are asked about such costs, or volunteer information about them in the course of negotiating your fees (e.g. as part of the justification for asking for a particular sum for a brief fee or other fixed fee), then you must give accurate information and not mislead the person with whom you are negotiating.

Payment

90. **Devilling:** The BSB Handbook contains no rules regulating the payment of fees by one self-employed barrister to another. (Cf. Code of Conduct 8th ed. at paragraphs 406.1 and 406.2.) In the case of devilling, therefore, the basis/ rate of fees to be charged to A by B, the time for payment, and all other terms of payment will have to be a matter of private arrangement between the two barristers. In case of dispute, reference should be made to the barristers' Head of Chambers, or to their Chambers' internal dispute resolution procedure. It may be

possible to resolve the dispute using the Bar Council's [Mediation and Arbitration Service](#), but this depends on both parties having paid the Bar Representation Fee and being willing voluntarily to submit to arbitration or mediation. Ultimately, however, resort to the civil courts may be necessary.

- 91. Outsourcing:** Given that outsourcing involves you engaging the third party, it must be assumed that you are also going to be responsible for that party's fees or charges. As a result, you should ensure that what you want the third party to do and what you are going to pay for it is clearly set out in your contract with the third party.
92. You are prohibited from paying or receiving a 'referral fee' as defined in the Handbook (rC10). You are also prohibited more generally from offering, promising or receiving commissions, referral fees and gifts which might reasonably be seen as compromising your independence (gC18). Underpinning these prohibitions are the Core Duties to act with honesty and integrity (CD3), to maintain your independence (CD4), and not to behave in a way that is likely to diminish the trust and confidence which the public places in you or in the profession (CD5). Where you are outsourcing work to a third party, it would be a breach of those Core Duties for you to ask for or accept any payment for outsourcing the work to that third party (irrespective of whether the technical definition of a 'referral fee' in the Handbook would catch such payments). This does not, though, prohibit the third party, for commercial reasons, offering his services to you at less than would be his normal rate if the entire benefit of that lower rate is passed on to your lay client (e.g. where you charge your client separately for the outsourced services, and you charge your client the reduced fee for those services which you have negotiated with the third party).

Tax

- 93. Devilling:** The Bar Council's current understanding of the tax position in relation to devilling is as follows:
- a. Work performed by a devil, B, should be the subject of a fee note issued to the instructed barrister A.
 - b. B must treat remuneration received from such work as earnings from his professional practice and must ensure it is included in computations of his liability to income tax.
 - c. VAT should be charged by B on his fees for such work, if B is registered for VAT.
 - d. Barrister A (if registered for VAT) may treat VAT charged by B as deductible "input tax" for the purposes of calculating his or her own liability to pay VAT.
 - e. For income tax purposes, the fees of B are tax-deductible expenses of A.

94. Outsourcing: The Bar Council's current understanding is that a third party's fees or charges incurred by you personally for support services relating to legal services which you are providing may be treated for tax purposes in the same way as other outgoings, such as Chambers' rent or travel expenses. This assumes, however, that the third party is an independent contractor, engaged under a genuine arm's-length relationship. If that is not the case (most obviously, if the third party is an employee), then the tax implications are likely to be more complex. You should take whatever advice you need so as to ensure that you comply with all relevant tax legislation.

Insurance

95. BMIF insurance covers you for the provision of legal services. There seems to be no reason in principle why BMIF cover would not apply to a claim made against you where an error made by the devil or third-party results in a failure properly to perform your services for which you bear a legal liability.

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 or 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 refer to the professional practice and ethics section of the Bar Council's website [here](#).