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
Issued by:	The Information Technology Panel
Issued on:	April 2018
Last reviewed:	March 2025
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.**

1. Solicitors' firms may require individual barristers or chambers to enter into a data processing contract under Article 28 of the UK General Data Protection Regulation (UK GDPR).

2. For the avoidance of doubt, self-employed barristers are data controllers of their client's data. They are not merely data processors, i.e. merely processing data on behalf of a controller, as such in most circumstances they should not enter a data processing contract with solicitors. 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. In such circumstances it would be appropriate to enter into an Article 28 contract, with the solicitor as the data controller.

3. Even then, in some circumstances, the barrister may need to exercise their independence, and in those circumstances will be a data controller. This arises when the barrister's role is not, in fact, to act as a sub-contractor on the solicitor's behalf, merely processing data, but is instead to provide independent objective specialist advice and advocacy. In that case, it is almost always up to the barrister to determine what information to obtain and process in order to perform the work, and each

barrister has their own professional responsibilities to fulfil. Care should be taken to ensure that an appropriate clause is included in any Article 28 contract.

4. Barristers should also be vigilant that the terms of a proposed data processing contract do not conflict with their obligations under the Code of Conduct, in particular with the barrister's duty to the court (CD1, rC4 and rC16), 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.

5. 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.

6. Barristers should also have in mind the possibility that damages payable following breach of a processor agreement between a barrister and a solicitor may be uninsured. The standard Bar Mutual Indemnity Fund (BMIF) and top-up policies contain terms which limit or exclude loss which has arisen solely as a result of a term in a contract.

7. For further information, please refer to:

a. The Bar Council's GDPR Guide for Barristers and Chambers

b. The Information Commissioner's Office (ICO) guidance on the UK GDPR

c. The ICO guidance on controllers and processors

Important Notice

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