



## **Controller-Processor Agreement for barristers and mini-pupils and other visitors**

- Purpose:** To provide a basic precedent for data processing between barristers and their mini-pupils.
- Scope of application:** All practising barristers and chambers
- Drafted by:** The Information Technology Panel
- Last reviewed:** January 2021
- 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. This precedent covers the processing of personal data by mini-pupils/guests of Chambers in compliance with essential requirements of the UK General Data Protection Regulations (EU) 2016/679, (the UK GDPR).
2. Further precedents on processing data between:
  - a. Members of Chambers and their Pupils and Devils, see [here](#).
  - b. Barristers and their Chambers see [here](#).
3. On 31 January 2020, the UK ceased to be an EU Member State and entered a Brexit implementation period until 31 December 2020. In relation to the contract provisions required, there are significant similarities between:
  - a. the General Data Protection Regulations (EU) 2016/679, (EU GDPR) regime (applicable under UK law until the end of the Brexit implementation period at 11 pm UK time on 31 December 2020 but remaining applicable in EEA states thereafter), and

b. the Retained General Data Protection Regulation (EU) 2016/679 (UK GDPR) regime (applicable under UK law from the end of the Brexit implementation period on 31 December 2020)

4. The UK GDPR will be implemented by an amended version of the Data Protection Act 2018 (DPA). The government has published a 'Keeling Schedule' for the UK GDPR, which shows the planned amendments. Given the similarities between the UK GDPR and EU GDPR regimes, this precedent refers to both as the 'GDPR' regimes unless there is a reason to distinguish them. The Trade and Cooperation Agreement was agreed in principle on 24 December 2020 (see [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/948119/EU-UK Trade and Cooperation Agreement 24.12.2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf)). Although the UK is a third country for the purpose of the GDPR, Article FINPROV.10A provides for an interim period (and subject to the UK data protection legislation remaining the same) during which transfers of personal data will not be considered as a transmission to a third country). The aim appears to be to maintain the de facto position until an adequacy decision can be made about UK data processing.

5. The precedent presumes both the Data Controllers and Data Processors are situated in UK. If the parties are not in the UK and/or do international work, consideration will be required to implement additional clauses to comply with transfer of data outside and to the UK, and from other EEA Member States, in compliance with Chapter V of the GDPR, and EU GDPR.

6. This precedent does not incorporate the proposals in the consultation issued on 7 September 2020 by the EDPB published *Guidelines 07/2020 on the concepts of controller and processor* in the GDPR for consultation. Those draft guidelines include new guidance on the requirements for contracts and arrangements: (a) between joint controllers; and (b) between controllers and processors. This precedent will be updated in due course to reflect those development once the final report guidance is published.

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## **PRECEDENT A**

Agreement applying to the processing of personal data by mini-pupils and others visiting [name of Chambers], made between:

- (1) Each Member<sup>1</sup> of [name of Chambers], as a data controller (the "Supervisor"), who wishes to be able to educate a mini-pupil, student or other visitor about the barrister's profession as conducted by the Supervisor at [name of Chambers] and
- (2) A person spending time at [name of Chambers] in order to obtain experience of work at [name of Chambers], including mini-pupils, students, and other persons considering applying to join [name of Chambers] as pupils or tenants ("the Visitor").

### **RECITALS**

Whereas:

- (a) Article 28.3 GDPR requires that processing by a data processor on behalf of the data controller shall be governed by a written contract
- (b) When a Visitor spends time with a Member in [name of Chambers] and carries out a task for a Member which involves the processing of Personal Data they do so as a data processor for a Supervisor who is the data controller.
- (c) This agreement sets out terms relating to the obligations of the Visitor/ Mini-Pupil in relation to the processing of data in accordance with the Data Protection Legislation.
- (d) This agreement also records the agreement of the Visitor to follow certain rules and requirements identified to the Visitor governing their conduct when in Chambers.

### **TERMS**

It is agreed as follows:

1. In this agreement:
  - a. "GDPR" means as applicable to either party or case from time to time:

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<sup>1</sup> Member includes associate member and door tenant.

- (i) The General Data Protection Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data,
  - (ii) The General Data Protection Regulation (EU) 2016/679 as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the England and Wales from time to time).
- b. "Data Protection Act" means the Data Protection Act 2018 including as amended, extended or re-enacted from time to time;
- c. "Data Protection Law" means:
  - (i) the Data Protection Act 2018,
  - (ii) the GDPR,
  - (iii) any laws which implement any such laws; and
  - (iv) any laws that replace, extend, re-enact, consolidate or amend any if the foregoing.
- d. "Personal Data" means personal data within the meaning of GDPR Article 4.1, for which the Supervisor is a data controller and the Visitor is a data processor.

### **General**

- 2. The Visitor agrees to respect and follow the guidance and directions given by the Supervisor, other Members of Chambers and Chambers' staff.

### **Fire, Health & Safety and Security**

- 3. The Visitor agrees to observe Chambers' instructions to which the Visitor is specifically referred, including any instructions as may be publicly displayed in Chambers, on fire, health & safety and security matters or to which they are directed on Chambers' website. The Visitor agrees to take reasonable care to avoid injury to anyone and to report immediately to the Supervisor or Member or Chambers' staff any accident or injury suffered during the work experience placement and to cooperate in the completion of the Chambers' accident reporting procedures.

## **Confidentiality**

4. The Visitor acknowledges that during the course of the placement with [name of Chambers] the Visitor may become privy to information about the affairs of clients and/or members of chambers and/or Chambers' staff, that is private, privileged and/or confidential. The Visitor therefore undertakes in consideration of Chambers providing such placement that the Visitor will maintain absolute confidentiality over all information which they receive, will not convey any such information to third parties and will not copy, distribute or remove from Chambers' premises any papers that contain such information. Upon departure, the Visitor may be required to hand over any notes made during the placement.

## **Data Protection**

5. The Visitor will process the personal data only on documented instructions from the Supervisor, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by any law to which the Visitor is subject; in such a case, the Visitor shall inform the Supervisor of that legal requirement before any processing, unless that law prohibits the provision of such information on important grounds of public interest.
6. Taking into account the nature of the processing, the Visitor will assist the Supervisor by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Data Controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of GDPR.
7. The Visitor will assist the Supervisor in ensuring compliance with the obligations pursuant to GDPR Articles 32 to 36 (dealing with Security of processing, Notification of data breaches, and Data Protection impact assessments (if any)), taking into account the nature of processing and the information available to the Visitor. Without prejudice to the generality of the foregoing:
  - a. The Visitor will maintain appropriate technical and organisational measures to protect Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access ("Data Breach").
  - b. The Visitor will notify the Supervisor, without undue delay, of any potential or actual Data Breach that may adversely affect the Personal Data or have an impact on the Supervisor or the security of its systems or services.

8. At the choice of the Supervisor, the Visitor will delete or return all the Personal Data to the Supervisor after the end of the placement.
9. The Visitor will make available to the Supervisor all information necessary to demonstrate compliance with the obligations laid down in GDPR Art. 28 and allow for and contribute to audits, including inspections, conducted by the Supervisor or another auditor mandated by the Supervisor. The Visitor shall immediately inform the Supervisor if, in its opinion, an instruction infringes GDPR or the applicable national law.

**VISITOR NAME** .....

**SIGNED** .....

**DATE** .....

**SIGNED ON BEHALF OF EACH MEMBER OF CHAMBERS WITHIN THE DEFINITION OF SUPERVISOR:**

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**NAME** .....

**DATE** .....