



Controller-Processor Agreement between barristers with pupils or devils

Purpose:	To provide a basic precedent for data processing between barristers and their pupils or devils.
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 provides a basic draft for members of chambers for use as part of the arrangements to share data with their pupils/devils who assist members on carrying out legal services. It should be noted that a second-six pupil (or later) may be a Data Controller in his/her own capacity- depending on the situation and the data processed, and if so, will be required to comply with their obligations as such under the Data Protection Laws as a Data Controller.

2. For further precedents for 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.
5. 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.
6. The precedent presumes both the Data Controller and Data Processor 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 UK, and from other EEA Member States, in compliance with Chapter V of the UK GDPR, and EU GDPR.
7. This precedent does not incorporate the proposals in the consultation issued on 7 September 2020 by the EDPB. 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.

PRECEDENT B

Form of agreement applying to the processing of personal data by pupils and devils in [name of Chambers] made between:

- (1) Member¹ of [name of Chambers], as an independent data controller ("the Data Controller"), who wishes to use a devil or pupil to carry out legal services and
- (2) Other barrister or pupil of [name of Chambers] as a data processor ("the Data Processor") who wishes to carry out legal services for a member.

RECITALS

Whereas:

- (a) GDPR requires that processing by a data processor on behalf of the data controller shall be governed by a contract
- (b) When a pupil or devil assists a member with the provision of legal services they may do so as a Data Processor for the member, Data Controller. This agreement does not apply in those circumstances.
- (c) This agreement records the agreement of the Data Controller on the one hand and a Data Processor on the other hand that the Data Processor shall comply with the requirements of Data Protection Law when acting as a processor for the Data Controller.

TERMS

It is agreed as follows:

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

¹ Member includes associate member and door tenant.

(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 Art 4.1, for which the Data Controller is a data controller and the Data Processor is a data processor.
2. The parties agree they will comply with all Data Protection Laws and duties of confidentiality in connection with the processing of shared data to provide the legal services, and the exercise and performance of their rights and obligations.
 3. The Data Processor will process the Personal Data only on documented instructions² from the Data Controller, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by UK law to which the Data Processor is subject; in such a case, the Data Processor shall inform the Data Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
 4. The Data Processor will ensure that any persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
 5. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Data Processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.
 6. The Data Controller generally authorises the Data Processor to use the services of other Data Processors previously approved or used by the Data Controller to process the Personal Data. The Data Processor will inform the Data Controller of

² If an instruction is initially given orally, the receipt of the instruction should be subsequently recorded and confirmed by email.

any intended changes concerning the addition or replacement of other processors, thereby giving the Data Controller the opportunity to object to such changes. Where a Data Processor engages another processor for carrying out specific processing activities on behalf of the Data Controller, the same data protection obligations as set out in this agreement will be imposed on that other processor by way of a written contract notified to the Data Controller prior to any processing taking place.

7. Taking into account the nature of the processing, the Data Processor will assist the Data Controller by adopting 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.
8. The Data Processor will assist the Data Controller 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 Data Processor. Without prejudice to the generality of the foregoing the Data Processor will maintain appropriate technical and organisational measures to protect Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
9. The Data Processor shall:
 - (a) in the case of any or each data subject request the Data Processors receives s/he will immediately record it and promptly refer it to the Data Controller;
 - (b) provide such information and cooperation and take such action as the Data Controller reasonably requests in relation to data subject requests within the timescales reasonable required by the Data Controller;
 - (c) not respond to any such data subject requests without the Data Controller's prior written approval;
 - (d) promptly notify the Data Controller of any data breach and provide the Data Controller of all relevant information of the breach as reasonable required.
10. Without prejudice to clause 9, the Data Processor shall provide such information, cooperation and other assistance to the Data Controller as the Data Controller reasonably requires to ensure compliance with the Data Controller's obligations under Data Protection law.

11. The processing of Personal Data by the Data Processor on behalf of a Data Controller will continue for so long as the Data Processor continues to assist the Data Controller with the provision of legal services.
12. At the choice of the Data Controller, the Data Processor will delete or return all the Personal Data to the Data Controller after the end of the provision of services relating to processing.
13. The Data Processor will make available to the Data Controller all information necessary to demonstrate compliance with the obligations laid down in GDPR Article 28 and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller. The Data Processor shall immediately inform the Data Controller if, in its opinion, an instruction infringes GDPR or the applicable national law.

Signed

Data Controller

The Data Processor

Date