



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 independent barristers and chambers. Addresses the laws applicable in England and Wales.
Drafted by:	The Information Technology Panel
Last reviewed:	March 2023
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. and neither the BSB or bodies regulating information security, nor the Legal Ombudsman is bound by any views or advice expressed in it.

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. The Precedent is to assist in compliance with essential requirements of the UK General Data Protection Regulation (EU) 2016/679, (the UK GDPR). While this Precedent focuses on the position under UK law, to assist those who may be tasked with drafting arrangements under the EU GDPR it references equivalent provisions under both regimes and refers to both as 'the GDPR regimes' where appropriate. The [Data Protection Act 2018 \(DPA 2018\)](#), implements a limited number of additional provisions into UK data protection law and regard should be had to the provisions of the [DPA 2018](#) in so far as relevant to the specific arrangements.

3. In relation to the contract provisions required, there are significant similarities between:

- a. the General Data Protection Regulation, [Regulation \(EU\) 2016/679](#) (EU GDPR) regime (which was applicable under UK law until the end of the Brexit implementation period at 11 pm UK time on 31 December 2020 and remains applicable in EEA states), and
- b. the United Kingdom General Data Protection Regulation, [Retained 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 Controller will either be Chambers and/or the individual barristers supervising and managing the pupil. Data protection law places legal obligations on controllers and processors to comply with a number of requirements in relation to the manner in which they process personal data. It is necessary for controllers and processors to enter into a written agreement that contains certain minimum provisions. Both processors and controllers are potentially liable for significant fines for non-compliance with data protection laws.

5. Chambers and barristers should adapt this Precedent in line with client confidentiality agreements and other compliance steps (including sector specific regulations the cases/practice areas may involve; or where the data subjects may be children; or data relating to criminal convictions/offences; or international transfer of data), as well as obligations they may wish the pupils to comply with, both during and after their pupillage. It would also be prudent for Chambers to make sure security provisions (including cybersecurity requirements) with the use of technology and sharing of data is managed properly and will be secure to limit any consequential security breach as well as appropriate training.

6. UK data protection law is a complex and principle based regime, the text of which lacks clarity in a number of areas and upon which there is currently limited guidance from regulators. Consequently, relevant regulators and/or courts may ultimately reach different views as to the interpretation of the regime to those set out in this precedent. Specialist advice should be sought when tailoring these provisions for a particular scenario. Guidance has been issued by the UK's Information Commissioner's Office (ICO) as well as by the European Data Protection Board (EDPB) under the EU GDPR (which is likely to remain highly influential in the UK under the UK GDPR given its similarities with the EU GDPR).

7. Do consider additional clauses where the pupil may have access to special categories such as (but not inclusively) personal data relating to criminal convictions or offences, or where the data subjects are children.

8. 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](#).

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of IT. **It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor bodies regulating information security 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 see the website [here](#).

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) The Data Protection Laws 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, or Data Controller. This agreement does not apply in those circumstances where the pupil is a Data Controller in their own right.
- (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. "Data Protection Law" means:
 - the Data Protection Act 2018 (**Data Protection Act**);
 - the **UK GDPR**, a version of the EU's General Data Protection Regulation, [Regulation \(EU\) 2016/679](#) (the EU GDPR) incorporated into UK law (with various amendments made by Brexit legislation) following the end of the Brexit implementation (or 'transition') period at 11pm on 31 December 2020 ([Retained Regulation \(EU\) 2016/679](#), the **UK GDPR**);
 - the General Data Protection Regulation, [Regulation \(EU\) 2016/679](#) as it

¹ Member includes associate member and door tenant.

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 United Kingdom or of a part of the United Kingdom from time to time) (the **EU GDPR**);

- any laws which implement or supplement any such laws; and
- any laws that replace, extend, re-enact, consolidate or amend any of the foregoing (whether or not before or after the date of this Agreement).

b. "Personal Data" means personal data within the meaning of Data Protection Laws (Article 4 UK GDPR), for which the Supervisor is a data controller and the Pupil 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 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

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

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 the Data Protection Laws (e.g. Chapter III of UK GDPR).

8. The Data Processor will assist the Data Controller in ensuring compliance with the obligations pursuant to Data Protection Laws, in particular UK 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 reasonably 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 Data Protection Laws in particular UK 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 any Data Protection Laws.

Signed

Data Controller

The Data Processor

Date