



The Bar Council

When Counsel and Chambers cease trading

Purpose:	To advise barristers in relation to their obligations surrounding data retention when they or their chambers cease trading
Scope of application:	All practising barristers
Issued by:	The IT Panel
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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. The responsibility to process personal data in relation to completed cases, whether it is to retain or delete information, continues regardless of whether a barrister stops practising or a Chambers ceases trading. Members of the Bar are required by their professional conduct rules to keep information safe and by the General Data Protection Regulation ("UK GDPR") and the Data Protection Act 2018 ("DPA 2018") to keep personal information secure. Records must also be retained after a case has concluded (see: rC129 of the Bar Standards Board (BSB) Handbook for public access work and rC141 of the Handbook for licensed access work (both min. 7-year retention)). It may also be necessary to keep case information for longer periods as suggested by the Bar Mutual Indemnity Fund (BMIF).

2. When Chambers ceases trading, each individual barrister will remain the data controller in relation to the personal data they control relating to their cases. In general for such data, the barrister will be the data controller, and Chambers a data processor on behalf of the barrister. A set of chambers which operates through a management company will be a data controller in respect of some matters, for example records relating to pupillage, employment of staff and marketing. Other sets of chambers operating under a different model may also be data controllers for such data,

depending on the set's formal constitutional arrangements. Alternatively, this role may fall to the Head of Chambers on behalf of Chambers. To the extent that the Chambers is a data controller, the set must comply with the obligations which apply to data controllers. These obligations will continue to fall on whichever legal entity is the data controller, even where Chambers cease trading.

3. Retention (and subsequent deletion) of personal data should extend to: case papers; documents prepared in the course of instruction; emails and correspondence; and counsel's notes or attendance notes. Retention and then deletion of this information constitutes processing under the UK GDPR and DPA 2018. Barristers will be data controllers in this context.

4. If a barrister stops working at the self-employed Bar, and this includes a move into employed practice, the responsibilities in relation to personal information contained in UK GDPR, DPA 2018, the BSB and BMIF will likely include: retention of personal information for an appropriate time (see: the Bar Council's guidance on [Data Retention Policy](#)); deletion at the end of that retention period; and maintaining the annual registration with the Information Commissioner's Office (ICO) until all personal data is disposed of.

5. Reg. 2 of the Data Protection (Charges and Information) Regulations 2018 requires data controllers to pay a charge to the ICO. For as long as the barrister retains data as a data controller the charge must be paid. Whether the data controller carries on business is not determinative as not all data controllers carry on businesses. **A barrister will be required to pay the ICO fee if they are processing personal data even when they are retired or working in a different capacity because merely holding or retaining data constitutes processing.**

6. A set of Chambers which is closing down will need to prepare for the processing of data after the closure. This will include (i) making decisions about the data it processes as a data controller and (ii) by consulting and following the instructions of the data controllers (usually the members of Chambers) for whom it processes data as a data processor. Where it acts as a data processor it may be instructed to transfer the relevant data to each of the individual barristers (as data controllers) or to the data controller's new data processors (e.g., where they are changing to a new set of Chambers).

7. In the case of the data it processes as a data controller, Chambers may need to arrange for some data to be retained. This may include: emails or correspondence; diary information; and/or business or contractual information which could constitute negotiations. Chambers will need to decide whether:

a. The Information will be retained by a data controller/processor who represents Chambers;

b. Having regard to any potential liabilities, the data can be deleted.

8. If personal data is to be retained, an appropriate person will need to retain control over it to ensure that it will be deleted when it is no longer required. Depending on the arrangements, that person may be (a) a data controller or (b) a data processor acting on the instructions of the Chambers, [or (c) both a data controller and a data processor]. Where the person is acting as a data processor there needs to be an agreement between that person and Chambers, in compliance with UK GDPR article 28. Under Article 28(3)(a) the agreement must say that the processor may only process personal data in line with the controller's documented instructions unless it is required to do otherwise by UK law; under Article 28(3)(b) the agreement must say that the processor must obtain a commitment of confidentiality from anyone it allows to process the personal data, unless that person is already under such a duty by statute; and under Article 28(3)(c) the contract must oblige the processor to take all security measures necessary to meet the requirements of Article 32 on the security of processing.

9. If Chambers is being dissolved, Chambers will cease to exist as an entity and therefore cannot act as a data controller in respect of the data it retains. Regardless, whichever person or entity takes control of the personal data is obliged under Article 32 to put in place appropriate technical and organisational measures to ensure the security of any personal data they process.

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 see [here](#).