



The Bar Council

## Note on Confidentiality and Data Protection Issues with regard to Student Placements

<b>Purpose:</b>	To address confidentiality and data protection issues arising with regard to student placements
<b>Scope of application:</b>	All practising barristers, but concentrating on the self-employed
<b>Issued by:</b>	The Ethics Committee
<b>First issued:</b>	November 2017
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<b>Status and effect:</b>	<b>Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.</b>

### Introduction

1. This Note should be read with reference to the Bar Council's "[Mini-pupils](#)" document, the relevant content of which it summarises and applies to the case of student placements.
2. There are two particular problems associated with the disclosure of information to students who are minors (U18s):
3. The material may be confidential to your client; or may be subject to obligations akin to confidence e.g. the obligation (owed to the Court) to use a disclosed document "*only for the purpose of the proceedings in which it is disclosed*": see CPR Rule 31.22.
4. The use of information may be subject to data protection restrictions under data protection legislation. The restrictions apply to all personal data (i.e. data

reasonably capable of being related to a specific individual) and are particularly stringent in relation to special categories of personal data<sup>1</sup>. For more information, see the Bar Council's [GDPR Guide for Barristers and Chambers](#).

## Confidentiality

5. It is highly unlikely that students under the age of 18 can be bound by contractual duties of confidence<sup>2</sup>, and whether and if so when and how they can be bound by non-contractual duties of confidentiality is a difficult legal question. Absent very specific client agreement, therefore, a student under the age of 18 should not be allowed to see material confidential to the client. This is so, regardless of whether the terms of any engagement or instructions agreed with the client would otherwise permit disclosure of such material to mini-pupils and the like: those terms are likely to be construed as permitting onward disclosure of confidential information only on enforceable conditions of confidence.

6. It is also open to serious question whether allowing a mini-pupil to see a disclosed document is "*use for the purpose of the proceedings in which it will have been disclosed*", within CPR 31.22 (or similar). Allowing a student under the age of 18 to do so is at least as problematic.

7. The better view is that U18s should not be allowed to see, or hear about, material that is confidential to the client, unless the client has specifically permitted it; and should not be allowed to see or hear about the content of documents disclosed by other parties, unless that information has since become public.

8. However once such material has been read to or by the court, or referred to at a hearing held in public, no problem arises. To the extent that documents have

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<sup>1</sup> Special categories of personal data means data consisting of information as to—

- a) personal data revealing **racial or ethnic origin**;
- b) personal data revealing **political opinions**;
- c) personal data revealing **religious or philosophical beliefs**;
- d) personal data revealing **trade union membership**;
- e) **genetic data**;
- f) **biometric data** (where used for identification purposes);
- g) data concerning **health**;
- h) data concerning a person's **sex life**; and
- i) data concerning a person's **sexual orientation**.

<sup>2</sup> See Chitty on Contracts (35<sup>th</sup> edition, 2024) para 12-007; *Proform Sports Management Ltd v Proactive Sports Management Ltd* [2006] EWHC 2903 (Ch); [2007] Bus LR 93 at [35]-[41].

been read to or by a public court, or information has been discussed in such a court, it may be discussed and shown to a mini-pupil or student.

### **Data protection**

9. The problems here are even greater. Data protection obligations relate to not just the lay client's personal data, but also to data capable of being related to any other identifiable person. Fair processing obligations are owed to all such persons. Disclosure of such data to a mini-pupil or student is likely to require the data subject's specific and informed consent.

10. Where data relates solely to the lay client, specific lay client agreement is required (although you will need to exercise judgment as to whether that such consent can safely be obtained via a professional client). In the case of special categories of personal data, the lay client's consent must be explicit; and the notice/request to the lay client may well have to identify precisely what data is to be disclosed and to whom, precisely.

11. But it is highly likely that case papers will include personal data which relates, identifiably, to persons other than the lay client e.g. an opposing party, a witness, potential witness; indeed any person. Disclosure of such data to a student or mini-pupil will almost certainly involve "processing" of that data. The conditions for fair processing are difficult to meet in circumstances where personal data will be passed to an U18. (Even in the case of non-special categories of personal data, it might be difficult to maintain that disclosure without confidentiality protections does not "*prejudice the rights and freedoms or legitimate interests of the data subject*": see paras 2.7 and 2.20-2.22 of the Mini-Pupils document.) Where the relevant data includes personal data in the special categories, disclosure of non-client data will be impossible, consistently with the relevant data protection obligations.

12. The implications of this for student placements are serious. The only safe advice that can be given is that U18s cannot be allowed to see case papers unless they are restricted to (i) publicly available materials (including materials that have been read by a court or discussed in court); and (ii) materials obtained from and relating only to the client, for the disclosure of which specific client agreement has been obtained; but (iii) documents disclosed by other parties must not be given to the student (unless they have become public). Anything beyond this involves a high degree of risk that the disclosure to the student may be considered unacceptable.

13. As will be apparent from the foregoing, discussion of, and attendance at, appeal hearings are much less likely to be problematic.

14. Anonymisation of documents will usually not be effective to avoid the difficulties of confidentiality and data protection because students will often be able to work out to which individuals those documents refer.

### **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 of 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](#).