



## Signing Controller-Processor Agreements with Solicitors' Firms

<b>Purpose:</b>	To advise the profession in relation to the signing of controller-processor agreements with solicitors' firms
<b>Scope of application:</b>	All practising barristers and chambers
<b>Issued by:</b>	The Information Technology Panel
<b>Issued on:</b>	April 2018
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<b>Status and Effect:</b>	<b>Please see the notice at the end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.</b>

1. It has come to the Bar Council's attention that some solicitors' firms have sought to require individual barristers or chambers to enter into a data processing contract under Article 28 of the GDPR/UK GDPR.
2. For the avoidance of doubt, self-employed barristers are data controllers of their client's data. They are not merely data processors, i.e. merely processing data on behalf of a controller, as such in most circumstances they should not enter a data processing contract with solicitors. Self-employed barristers should be aware that it is only in very limited circumstances, such as when on secondment to work at a solicitor's firm, that they are likely properly to be considered to be data processors. In such circumstances it would be appropriate to enter into an Article 28 contract, with the solicitor as the data controller.
3. Even then, in some circumstances, the barrister may need to exercise their independence, and in those circumstances will be a data controller. This arises when the barrister's role is not, in fact, to act as a sub-contractor on the solicitor's behalf, merely processing data, but is instead to provide independent objective specialist advice and advocacy. In that case, it is almost always up to the barrister to determine what information to obtain and process in order to

perform the work, and each barrister has their own professional responsibilities to fulfil. Care should be taken to ensure that an appropriate clause is included in any Article 28 contract.

4. Barristers should also be vigilant that the terms of a proposed data processing contract do not conflict with their obligations under the Code of Conduct, in particular with the barrister's duty to the court (CD1, rC4 and rC16), with obligations to act independently in the best interests of the client, not to permit the professional client to limit the barrister's discretion as to how the interests of the client can best be served (CD4, rC3.5 and rC15), and to keep appropriate records (rC87.2). The terms of a data processing contract could for example give rise to difficulties for a barrister in the event of a disagreement with the solicitors, or if a lay client is considering whether to change solicitors or changes solicitors.
5. In view of the nature of the barrister's role and the potential conflict with the barrister's duties under the Code of Conduct, both the need for and content of any proposed data processing contract should be very carefully considered. It will not be appropriate for self-employed barristers to sign such an agreement for work carried out in the course of normal practice.
6. Barristers should also have in mind the possibility that damages payable following breach of a processor agreement between a barrister and a solicitor may be uninsured. The standard BMIF and top-up policies contain terms which limit or exclude loss which has arisen solely as a result of a term in a contract.
7. For further information, please refer to:
  - a) the Bar Council's [GDPR Guide for Barristers and Chambers](#)
  - b) the Information Commissioner's Guidance: [here](#) and specifically [here](#).

### **Important Notice**

This document has been prepared by the Bar Council to assist barristers on matters of information security. **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 [here](#).