

Barrister GDPR Data Retention and Disposal Policy

1. Introduction

In the course of carrying out various functions, Martin Ouwehand (“the Barrister”) creates and holds a wide range of recorded personal information. Records will be properly retained to enable him to meet his business needs, legal requirements, to evidence events or agreements in the event of allegations or disputes arising and to ensure that any records of historic value are preserved.

The untimely destruction of records by the Barrister could affect:

- the conduct of his business;
- his ability to defend or instigate legal actions;
- his ability to comply with statutory obligations;
- his reputation.

Conversely, the permanent retention of records is undesirable and disposal is necessary to free up storage space, reduce administrative burden and to ensure that the Barrister does not unlawfully retain records for longer than necessary (particularly those containing personal information).

This policy supports the Barrister in demonstrating accountability through the proper retention of records and by demonstrating that disposal decisions are taken with proper authority and in accordance with due process.

2. Purpose

The purpose of this policy is to set out the length of time for which the Barrister’s records should be retained and the processes to review the records as to any further retention or for disposing of records at the end of the retention period. The policy helps to ensure that the Barrister operates in compliance with the General Data Protection Regulation and any other legislative or regulatory retention obligations.

3. Scope

The policy covers all types of records that the Barrister creates or holds. The records may include, but are not limited to, the following:

- client files;
- minutes of meetings;
- submissions from external parties;
- contracts and invoices;
- registers;
- legal advice;

- file notes;
- financial accounts;
- employee information;
- the Barrister's publications.

The policy is applicable irrespective of the media on which such records are created or held. Such media may include:

- paper;
- electronic files (including electronic databases, Word documents, Power Point presentations, spreadsheets, webpages and emails); and
- photographs, scanned images, CD-ROMs and video tapes.

4. Application

The policy applies equally to the Barrister and to any full-time or part-time employees on a substantive or fixed term contract and to associated persons who work for him.

5. Retention Period

Records will normally be retained until after the expiry of 15 years from the date of the last piece of work the Barrister completed in relation to the matter to which the record relates. Hard copies of such records may be destroyed or returned to the instructing solicitor/client at an earlier date following completion of the legal services to which they relate. Records of the name (and possibly contact details) of the instructing solicitor and/or client and the names of other parties relating to such legal services, together with a description of the matter, may be kept until the Barrister retires from practice.

The retention period derives from either:

- business need; i.e. the running of the Barrister's practice including the need to comply with his professional or legal obligations;
- legislation;
- the need to be able to respond to complaints;
- the need to be able to take or defend legal action and taking account of the effect of section 14B of the Limitation Act 1980 and any claims by way of contribution.

6. Disposal

6.1 What is Disposal

The Barrister is responsible for ensuring that the records are periodically reviewed (at least annually) to determine whether any retention periods have expired. If the retention period has expired, the record must be reviewed and a 'disposal action' agreed upon.

A 'disposal action' is:

- physical and/or electronic destruction of the record; or
- alternative disposal of the record e.g. the return of the record to the instructing solicitor; or
- retention of the record for a further period.

6.2 Making and Recording the Disposal Decision

A review of the record should take place at the periodic review following the expiry of the retention period or, if that is not feasible, the record should be retained and a later review date set. It need not be a detailed or time-consuming exercise but there must be a considered appraisal of the contents of the record. The review should be conducted by the Barrister.

The disposal decision must be reached having regard to:

- on-going business and accountability needs (including audit);
- current applicable legislation;
- whether the record has any long-term historical or research value;
- best practice in the legal industry
- costs associated with continued storage versus costs of destruction;
- the legal, political and reputational risks associated with keeping, destroying or losing control over the record including as a result of unexpired limitation periods for actions arising from the provision of legal services.

Decisions must not be made with the intent of denying access or destroying evidence.

7. Destruction

7.1 General

No destruction of a record should take place without assurance that:

- the record is no longer required as part of the Barrister's practice;
- no work by the Barrister in relation to the record is outstanding;
- no litigation or investigation is current or pending which affects the record;
- there are no current or pending FOIA or GDPR subject access requests which affect the record.

7.2 Destruction of Paper Records

Confidential paper records should be placed in confidential waste sacks and these sacks should be made available for collection in order that they can be destroyed. It is essential that any documents that are to be thrown away and contain confidential or personal information must be disposed of in this way, in order to avoid breaches of confidence or of the GDPR.

Disposal of documents other than those containing confidential or personal information may be disposed of by binning or recycling.

7.3 Destruction of IT Equipment holding Electronic Records

In the event IT equipment holding electronic records needs to be disposed of, confidential information must be destroyed or wiped using a recognised method to put the data beyond recovery. For mobile phones, smart phones and tablets these should be reset to factory settings. The steps taken to delete data must be recorded in the IT Asset Register, together with the date on which the steps were taken.

8. Retention

Records may be retained for a further period following the disposal decision if they have on-going business need or if there is specific legislation that requires them to be held for a further period, and having regard to the bulleted criteria under sections 1, 5, 6.2 and 7.1 above.

9. Further Information

This policy should be read in conjunction with the General Data Protection Policy.

Date of adoption: March 2022