

# Nicholas Macklam – Barrister GDPR Data Retention and Disposal Policy

## 1. Introduction

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

The untimely destruction of records by **Nicholas Macklam** could affect:

- the conduct of business;
- the ability to defend or instigate legal actions;
- the 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 **Nicholas Macklam** does not unlawfully retain records for longer than necessary (particularly those containing personal information).

This policy supports **Nicholas Macklam** 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 provide guidance as to set out the length of time that **Nicholas Macklam'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 **Nicholas Macklam** operates in compliance with the General Data Protection Regulation and any other legislative or regulatory retention obligations.

## 3. Scope

The policy covers the records listed in the Data Processed Register irrespective of the media on which they are created or held including:

- paper;
- electronic files (including database, Word documents, power point presentations, spreadsheets, webpages and e-mails and other Microsoft Office (or similar software) documents);
- photographs, scanned images, CD-ROMs and video tapes.

And includes all types of records which **Nicholas Macklam** 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;
- **Nicholas Macklam's** publications.

## 4. Application

The policy applies equally to full time and part time employees on a substantive or fixed term contract and to associated persons who work for **Nicholas Macklam**.

## 5. Minimum Retention Period

Unless a record has been marked for 'permanent preservation' it should only be retained for a limited period of time.

A recommended minimum retention period for various categories of records is set out in the table below.

#	Category of record	Recommended minimum retention period
1	Electronic records of emails	6-7 years
2	Papers and electronic records stored on device belonging to instructing solicitor or client (eg a USB stick or CD)	6-7 years
3	Other papers the contents of which are also recorded electronically and held by Nicholas Macklam	No minimum retention period (as contents recorded electronically)
4	Other papers or other records relating to a matter on which Nicholas Macklam has been instructed	6-7 years

Please note that these are only recommended minimum retention periods. For particular matters Nicholas Macklam may decide that there is no need to retain the record for the minimum period.

The recommended minimum retention periods derive from a combination of the following:

- business needs, i.e. the running of Nicholas Macklam's practice;
- legislation;
- responding to complaints; and

- taking or defending legal action.

## 6. Disposal

### 6.1 What is Disposal

Nicholas Macklam is responsible for ensuring that this policy is periodically reviewed (at least annually) to determine whether any retention periods have expired. Once the retention period has expired, the record must be reviewed and a 'disposal action' agreed upon.

A 'disposal action' is:

- the destruction of the record; or
- the retention of the record for a further period; or,
- alternative disposal of the record, e.g. returned to the instructing solicitor.

### 6.2 Making and Recording the Disposal Decision

A review of the record should take place as soon as possible after 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 will be conducted by Nicholas Macklam.

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.

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

## 7. Destruction

No destruction of a record should take place without Nicholas Macklam having reasonably satisfied himself that:

- the record is no longer required by any part of the practice;
- no work is outstanding by any part of the practice
- 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.

### 7.1 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.

## **7.2 Destruction of 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. For laptops, PCs, Macs merely deleting the files, single-pass overwriting, or reformatting the disk is insufficient. 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**

The record may be retained for a further period if it has on-going business value or if there is specific legislation which requires it to be held for a further period.

## **9. Further Information**

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

Effective from: 25/05/18