

DATA RETENTION & DISPOSAL POLICY OF:

Naomi Ling

Outer Temple Chambers, 222 Strand, London WC2R 1BA

Z7949471

9 June 2021

Policy became operational on: 9 June 2021

Next review date: 9 June 2022

Data Retention & Disposal Policy

Introduction

In the course of carrying out various functions of my practice, I create and hold a wide range of personal information. I need to retain a record of this information to meet business needs, legal requirements, as evidence of work done or to provide supporting evidence in the event of allegations or disputes.

The untimely destruction of this personal information could affect:

- The conduct of my business
- My ability to defend or instigate legal actions
- My ability to comply with statutory obligations
- My reputation

Conversely, pursuant to Article 5.1(c) of the General Data Protection Regulation ('GDPR'), personal data should not be kept in a form which permits the identification of data subjects for longer than is necessary for the purposes for which the personal data are being processed.

This policy is intended to set out the period for which I retain personal data (or the criteria which I use to demonstrate that period, insofar as it may vary from case to case) and the methods which I use to dispose of personal data after the expiry of that period.

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

Scope

The policy covers all personal data contained in the records listed in the Data Processed Register, irrespective of the media on which they are created or held, including, but not limited to, the following:

- Paper files (including any notebooks)
- Electronic files (including any database, Word documents, PowerPoint presentations, spreadsheets, webpages and emails)
- Photographs, scanned images, CD-ROMs, DVDs, USB flash drives and video footage.

The policy applies to all types of records that I create or hold. The records may include, but are not limited to, the following:

- Client files
- Attendance notes at conferences or court

- Records from third parties
- Contracts and invoices
- Legal advice
- File notes
- Financial accounts
- Employee information where relevant
- Pleadings, advices and publications, and
- Documents and minutes of meetings of chambers committees of which I am a member.

Minimum Retention Period

Recital 39 to the GDPR requires that the period for which personal data are stored is limited to a 'strict minimum'. That 'strict minimum' will, as noted above, be informed by the purpose for which the data controller processes the relevant personal data.

Where that purpose is the provision of legal services, the following considerations will apply in respect of determining the appropriate retention period:

- It is necessary to retain personal data in order to document agreements reached as regards the provision of legal services.
- It is necessary to retain personal data in order to deal with any complaints which a client (or other data subject) may raise in respect of the services which I provide.
- It is necessary to retain at least some personal data in order to ensure the proper administration of my practice as a barrister (both from a business and a regulatory perspective, as, for instance, in the case of conflict checks).
- The standard time limit for bringing claims based on breach of contract or tort is six years. In respect of claims in the tort of negligence, however, s.14A of the Limitation Act 1980 provides that (subject to a 15-year longstop) a special time limit of three years from the "date of knowledge" will apply in cases where the facts relevant to the cause of action are not known at the date on which the cause of action in fact accrues.
- In light of those limitation periods, on 26 July 2018 the Chairman of the Bar Mutual Indemnity Fund (which provides professional indemnity insurance to barristers) recommended a retention period of at least 15 years.

Weighing the above considerations, and balancing my own legitimate needs against the impact of prolonged retention on others' privacy, I have adopted a standard retention period of 15 years from the date of my last involvement in the relevant matter. (In this context, I use the word "involvement" broadly. It can range from representation in Court to one-line administrative email correspondence.)

Practice Management

Upon the conclusion of a case I will manage my case papers as follows:

- All physical papers, files, communications, CDs, USB flash drives, photos and other physical matter relating to any case shall be securely destroyed or returned to the solicitors/and/or instructing client/government body within **28 days** after the end of the case (meaning the date from which the opportunity to appeal has been exhausted).
- All electronic papers, files, communications, pleadings will be retained for **15 years** in the case of each client who is an adult and has capacity.
- I will not retain any electronic or paper records for any case at **home or on any computer** or electronic device belonging to me for more than **15 years** from the date of the conclusion of the case.
- I will not retain any relevant document pertaining to any chambers committee, for any longer than stipulated to me by chambers in a Data Sharing Agreement.

The recommended minimum retention period derives from either:

- Business need, i.e. running of my practice
- Legislation
- Responding to complaints
- Taking or defending legal action, and
- Meeting the requirements set by a data controller within the Data Sharing Agreement, for example data shared with me in my role sitting on chambers committees.

Disposal

What is disposal?

I am responsible for ensuring that my Data Processed Register is reviewed annually or more frequently to determine whether any records require disposal. 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;
- The retention of the record for a further period within my practice; or,
- Alternative disposal of the record, for example returned to the instructing solicitor.

Making and recording the disposal decision

A review of the record will 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 me as owner of the practice.**

The disposal decision will be reached having regard to:

- Ongoing 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; and
- Professional negligence claims.

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

Destruction

No destruction of a record will take place without assurance 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; and
- There are no current or pending FOIA or UK GDPR subject access requests which affect the record.

Destruction of paper records

Destruction will be carried out in a way that preserves the confidentiality of the record. Records containing personal information should be placed in confidential waste bins or shredded and placed in paper rubbish sacks for collection by an approved disposal firm. All copies, including security copies, preservation copies and backup copies, will be destroyed at the same time in the same manner.

Destruction of electronic records

All electronic records will be deleted in so far as is possible in accordance with the systems employed by me and by Outer Temple Chambers. Any electronic records held on hard drives owned or controlled by me will be destroyed or securely wiped.

Further retention

The record may be retained for a further period if it has ongoing business value or if there is specific legislation which requires it to be held for a further period. On occasion, some pleadings will be retained for the purposes of legal research and for use within my legal practice. Where this is the case, personal data may be anonymised or redacted. It will be subject to risk assessment and regular review. Limited information may also be retained for the purposes of checking conflicts of interests.

Further information

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