



Data Sharing Protocol between Law Society of Ireland and The Bar of Ireland

Introduction

The Law Society of Ireland is the educational, representative and regulatory body for solicitors in Ireland (**Law Society**). The Bar of Ireland is the representative body for the barristers' profession in Ireland (**The Bar of Ireland**).

DATA SHARING between SOLICITORS AND BARRISTERS

To work together effectively, solicitors and barristers need to share data (including personal data as defined under the General Data Protection Regulation (EU) 2016/679 (**GDPR**)) with each other so they can provide legal services and/or advice to clients (**Legal Services**).

The Law Society and The Bar of Ireland support the accurate, secure and confidential sharing of data (including personal data) between their members where such sharing is necessary for the provision of Legal Services. Furthermore, the Law Society and The Bar of Ireland acknowledge that the sharing of such data between their members should be in accordance with the law as well as their members' respective regulatory obligations, common law and equitable duties.

Status of Solicitors and Barristers under the GDPR

A person's status as a "controller" or "processor" of personal data dictates the nature and extent of their obligations under the GDPR. Broadly speaking, a controller is a person that determines the purposes and means of processing personal data, whereas a processor is a person that processes personal data on behalf of a controller.

In addition, where two parties are each controllers of the same personal data, they may be regarded as either independent controllers or joint controllers of that data. Joint controllership arises where two or more controllers jointly determine the purposes and means of processing personal data.

Whether a solicitor/barrister is a controller or processor of personal data is a question of fact. As such, solicitors and barristers must individually determine their status prior to sharing personal data. In respect of client supplied personal data, the solicitor-client relationship will dictate whether the solicitor is processing such personal data as a controller or processor, and consequently the basis on which the solicitor may disclose personal data to a barrister that he/she has retained.

In general, the Law Society and The Bar of Ireland are of the view that solicitors and barristers act as independent controllers when they work together (e.g. in litigation) and when they process personal data in performing their respective professional roles. In such circumstances, the solicitor and barrister must take individual responsibility for ensuring that rights and obligations under the GDPR are respected, and a written data processing agreement between the solicitor and barrister will not be required. Indeed, such a written data processing agreement could conflict with the independence of counsel in any given case. This Protocol is drafted to address the sharing of personal data between solicitors and barristers who are acting as independent controllers.

However, situations may arise where a barrister acts as a processor on the solicitor's behalf. The Law Society and The Bar of Ireland consider that such situations are likely to be rare in light of the independent skill and expertise of both professions. Should such scenarios arise, a written data processing agreement that incorporates the requirements of Article 28 of the GDPR will be necessary.

In addition, where solicitors and barristers act as joint controllers of personal data, it will be necessary to put in place a written arrangement between them for the purpose of determining compliance with their obligations under the GDPR.

PURPOSE OF THIS PROTOCOL

The Law Society and The Bar of Ireland approve this Protocol, the purpose of which is to set out guidelines for solicitors and barristers where the sharing of data (including personal data) (**Shared Data**) between them is necessary for the provision of Legal Services.

GENERAL PRINCIPLES

a) *Compliance with GDPR*

Solicitors and barristers should at all times comply with their respective obligations under GDPR and applicable data protection law.

b) *Confidentiality*

Solicitors and barristers should at all times comply with their duty of confidentiality which is one of the core principles for both professions. This is in addition to any legal obligation under GDPR and other applicable data protection law.

c) *Security*

Solicitors and barristers should each implement appropriate technical and organisational security measures to ensure a level of security which is proportionate to the risks involved in processing the Shared Data as part of their practise.

Solicitors and barristers each acknowledge that they are subject to and shall comply with Article 32 of the GDPR. Barristers shall notify solicitors of any actual or suspect security breaches for client-management purposes.

d) *Mutual assistance*

Solicitors and barristers should where appropriate assist each other in complying with their respective obligations under GDPR and applicable data protection law including providing reasonable assistance to the other in complying with data subject access requests as well as dealing with any complaints, notifications or communications from data subjects or supervisory authorities.

Furthermore, solicitors and barristers should consult each other about notices that are to be given to data subjects in relation to Shared Data in accordance with data protection law.

Privacy notices which are provided by solicitors to clients should expressly indicate that personal data may be shared with barristers for the purpose of legal advice and/or litigation.

This Protocol is without prejudice (and is in addition) to solicitors' and barristers' own regulatory and statutory obligations as well as common law duties.