

Data Retention and Disposal Policy

1. Introduction

In the course of carrying out various professional functions, Robert Andrew Kyle Lecuona (“the Barrister”) (ICO REG. NO. ZA565903) creates and holds a wide range of recorded personal information. Records will be properly retained to enable him to perform his professional duties and legal requirements. The creation and retention of these records is also to provide evidence of events or agreements in the event of allegations or disputes arising and to ensure that any records of historic value are preserved.

Where records are destroyed at an improper moment it could affect the Barrister:

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

However, the permanent retention of records is undesirable and disposal is necessary to free up storage space, reduce administrative burdens and ensure that the Barrister does not unlawfully retain records for longer than necessary.

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 for reviewing those records to determine whether further retention is necessary and for disposing of those 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. These 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; and
- 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 and clouds, Word documents, Power Point presentations, spreadsheets, webpages and emails); and
- photographs, scanned images, memory keys, 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. Minimum retention period

Unless a record has been marked for 'permanent preservation' it should only be retained for a limited period of time. The currently recommended minimum retention period is 1 month from the date on which the instructions in relation to which the record is held are completed. This retention period applies to all records held.

The recommended minimum retention period derives from:

- business needs, i.e. the running of the barrister's practice;

- legislation;
- the need to be able to respond to complaints; and
- the need to be able to take or defend legal action.

6. Disposal

6.1 What is disposal?

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

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

6.2 The disposal decision

A review of the record should take place as soon as possible after the expiry of the retention period. If that is not feasible, the record should be retained and a later review date set. Reviewing need not be a detailed or time-consuming exercise but must involve 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 destruction; and
- the legal, political and reputational risks associated with keeping, destroying or losing control of the record.

Decisions must not be made with the intent of denying access to 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;
- and
- 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 be disposed of in this way, in order to avoid breaches of confidence or of the GDPR.

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

7.3 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. Mobile phones, smart phones and tablets 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 value 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 Barrister's General Data Protection Policy.