

Data-sharing agreement made between
The Office of the Immigration Services Commissioner
And
The Bar Standards Board

1. Introductory

1.1. This data-sharing agreement is made on 15 April 2024.

1.2. All references to GDPR in this agreement should be read as meaning UK GDPR and the amended DPA 2018. References to “applicable data protection legislation” or similar are to the GDPR, the DPA 2018, any legislation succeeding those provisions and any secondary legislation made under or in relation to those provisions or their successors. The terms “personal data”, “controller”, “data subject”, “processing”, “personal data breach” and cognate terms have the meaning given to them in applicable data protection legislation.

2. Parties to the agreement and responsibility for ensuring compliance

2.1. The parties to this agreement are:

- (a) The **Bar Standards Board** (**BSB**) in its role as the independent regulator of the Bar of England and Wales, acting under the Legal Services Act 2007, whose principal office is at 289-293 High Holborn, London, WC1V 7HZ; and
- (b) The **Office of the Immigration Services Commissioner** (**OISC**) regulates the provision of immigration advice and services across the UK and whose principal office is at PO 567, Dartford Kent DA1 9XW.

2.2. The BSB and OISC are committed to working together to achieve the appropriate public interest outcomes in the prevention, detection, investigation and prosecution of possible professional misconduct by immigration practitioners regulated by the BSB and by OISC.

2.3. The sharing of data under this agreement will be administered on behalf of the BSB by the Head of Supervision who can be contacted at supervision@barstandardsboard.org.uk. The BSB’s operation of this agreement will

be subject to the oversight of the BSB's Data Protection Officer who can be contacted at DProtection@Barcouncil.org.uk.

2.4. The sharing of data under this agreement will be administered on behalf of OISC by or under the authority of the Legal Team. OISC's operation of the agreement will be subject to the oversight of OISC's Data Protection Officers who can be contacted at legalteam.oisc.gov.uk.

3. Objective of data sharing under this agreement

3.1. The BSB is the regulator for barristers in England and Wales. Under the Legal Services Act 2007 it regulates practising barristers, unregistered barristers, BSB entities, Authorised Education and Training Organisations, registered European lawyers and employees of these individuals or entities. The BSB's regulatory objectives include protecting the public interest, protecting and promoting the interests of consumers, and promoting and maintaining adherence to professional principles. As part of its work, the BSB investigates complaints against those it regulates and, if necessary, takes disciplinary action against them. Such complaints, investigations and action taken are recorded in a disciplinary record for the individual or entity concerned.

3.2. The OISC was established by the Immigration and Asylum Act 1999 (as amended) to ensure that those who provide immigration advice and services are fit and competent to do so. It may receive complaints about persons providing immigration advice and services irrespective of whether such persons are OISC regulated or regulated by one of the Designated Qualified Regulators for the purposes of paragraph 1 of Schedule 4 to the Legal Services Act 2007. It also prosecutes those individuals in accordance with S.91 Immigration and Asylum Act 1999 (as amended) found to be providing unregulated immigration advice and/or services.

3.3. In order to discharge these functions properly it may at times be necessary for both parties to consider whether either party has taken action in relation to any individual subject to regulation by the BSB or OISC.

3.4. The purpose of sharing data under this agreement therefore is (a) to assist OISC to discharge its statutory functions set out above and (b) to enable the BSB to pursue its regulatory objectives.

4. Categories of data that may be shared

4.1. Upon receiving a request, properly formulated in accordance with section [12] below, the BSB will share with OISC, subject to being satisfied in each case that it is lawful to do so, such information as it presently holds consisting of:

- a. Summary detail of any disciplinary findings and sanction imposed for professional misconduct made against a barrister;
- b. Supervision information and intelligence held that gives rise to concerns or potential concerns about a barrister that might cast doubt on their fitness to practice where they are applying to be regulated by the OISC.

4.2. Upon a request, properly formulated in accordance with section [12] below, OISC will share with the BSB, subject to being satisfied in each case that it is lawful to do so, such information as it presently holds on its current and former members where those members have had their applications refused, authorisation cancelled; or have been prohibited from providing immigration advice and/or services as a result of action taken by the OISC.

5. Lawful basis for sharing data

5.1. The parties record that they consider themselves entitled to share data under this agreement pursuant to GPDR:

- i. *Article 6(1)(c) UK GDPR processing is necessary for compliance with a legal obligation;*
- ii. *Article 6(1)(e) UK GDPR processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority,*
- iii. *Article 6(1)(f) UK GDPR processing is necessary for legitimate interests.*

5.2. The legal basis for the BSB to share information is set out in [s93\(1\) of the Immigration & Asylum Act 1999, \(as amended\)](#), as follows:

93 Information.

(1) No enactment or rule of law prohibiting or restricting the disclosure of information prevents a person from—

(a) giving the Commissioner information which is necessary for the discharge of his functions; or

(b) giving the First-tier Tribunal information which is necessary for the discharge of its functions.

5.3. The legal basis for OISC to share information is set out in [s.93\(3\)\(d\) of the Immigration & Asylum Act 1999, \(as amended\)](#), as follows:

93 Information.

(2) No relevant person may at any time disclose information which—

(a) has been obtained by, or given to, the Commissioner under or for purposes of this Act,

(b) relates to an identified or identifiable individual or business, and

(c) is not at that time, and has not previously been, available to the public from other sources,

unless the disclosure is made with lawful authority.

(3) For the purposes of subsection (2), a disclosure is made with lawful authority only if, and to the extent that—

(d) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.

6. “Special category” and “crime” data

6.1. It is possible that data to be disclosed under this agreement will include “special category” data as defined in GDPR Art 9 and/or personal data relating to criminal convictions and offences as defined in GDPR Art 10 and DPA 2018, s11(2) (“crime data”).

6.2. Where that is the case, the parties will only share such data where one of the conditions set out in GDPR Art 9(2) or DPA 2018 Schedule 1 or other applicable data protection legislation applies.

7. Occasions on which data will be shared

7.1. The parties will share data under this agreement only in response to a valid request in accordance with section [12] below for the following purposes:

- a. To enable the assessment of risk to the public such as to;
 - i. minimise the risk of poor quality or illegal immigration advice and services;
 - ii. minimise the risk of fraud or other criminality; and
 - iii. minimise the risk to clients.
- b. alleged criminality, misconduct, or other failures are properly investigated and decided upon and, where appropriate, to assist in the prosecution by OISC before the criminal courts;
- c. alleged misconduct or other failures are properly investigated for potential enforcement investigation or action by both the OISC and BSB or supervision by the BSB;
- d. to ensure both parties know when the other has concerns about an individual's fitness to provide immigration advice and services; and
- e. understand the working practices of each party, including the relationship between persons regulated by the parties in the public interest.

7.2. When considering sharing data under this agreement, both parties will first have regard to any information sharing policies that are in place at the time of the request.

8. Cooperation between the BSB and OISC

8.1. Either party may request additional cooperation of the other in the following areas:

- a. Sharing subject-matter expertise;
- b. Supplying witness statements for use or potential use in court or tribunal proceedings;

- c. Working together where needed on external communications affecting both parties jointly;
- d. Advice and guidance on its Handbook Rules and regulatory procedures to each other, particularly in the course of an investigation by either organisation

Such requests shall be given due consideration having regard to any relevant policies in force at the time of the request.

9. Accuracy of data

9.1. The parties will take all reasonable steps to ensure that any personal data it discloses pursuant to this agreement are accurate and up to date.

10. Format of data

10.1. The parties shall co-operate to ensure that any personal data provided under this agreement shall be in a form that is readily comprehensible to both and are not prone to corruption due to incompatibilities between the parties' data processing systems.

11. Use and retention of shared data

11.1. Both parties will use personal data under this agreement strictly for the purposes of regulatory, disciplinary, contractual or other legal investigations or proceedings. This may include lawful disclosure of personal data to persons under investigation, witnesses, legal advisers, other regulators, professional bodies, prosecuting bodies and law enforcement agencies including the police, HM Revenue and Customs and the National Crime Agency.

11.2. Both parties will notify each other of any restrictions on the use to which the personal data can be put including any onward disclosure.

12. Security of data

12.1. Both parties will have in place appropriate technical and organisational measures to ensure a level of security that is appropriate to the sensitivity of the data concerned.

12.2. Any requests under this agreement from the OISC should be sent to the BSB's Supervision team at supervision@barstandardsboard.org.uk. This inbox will also be used to transmit the requested data.

12.3. Any requests under this agreement from the BSB should be sent to intelligence@oisc.gov.uk which will also be used to transmit the requested data.

12.4. In the event that OISC or the BSB suffers a Personal Data Breach that concerns or may concern any personal data disclosed to it pursuant to this agreement, the party suffering the breach will be required under GDPR Article 33 to notify the Information Commissioner and/or under GDPR Article 34 to notify the data subject. That party shall also notify the other party within the same time frame as required under these articles.

13. Requests and responses under this agreement

13.1. Any request for personal data made by the parties under this agreement shall (a) state that it is a request made under this agreement; (b) provide sufficient information to enable the parties to identify the data subject to whom it relates; (c) state the purpose for the request and (d) detail the lawful basis or bases for sharing the data as set out in sections 5 and 6.

13.2. Where data is sought on the basis that it is necessary for the discharge of OISC's functions or the functions of the First-tier Tribunal pursuant to s93(1) Immigration and Asylum Act 1999, any request issued under this section 12 must say so.

13.3. The parties will normally respond to a request made under this agreement within 10 working days but reserves its right not to do so where, on reasonable grounds, it considers that disclosure may be unlawful or requires more time or information in order to consider the position.

14. Data subject access requests and other requests for shared data

14.1. Each party is an independent Controller in respect of the personal data that is to be shared under this agreement and takes full responsibility for dealing with all data subject access requests under GDPR Art 15 and other assertions of rights by data subjects under GDPR Chapter III or other applicable data protection legislation.

14.2. Without prejudice to the foregoing, each party shall assist the other party, so far as is reasonably practicable, to respond to such requests or assertions of rights and any related regulatory or legal complaints concerning the sharing of personal data under this agreement.

14.3. If OISC receives, under the Freedom of Information Act 2000, a request for information which comprises or includes personal data provided under this agreement, OISC shall promptly notify the BSB of the request and take into account any representations the BSB may make as to whether the said personal data should be provided to the requester.

15. Review of this agreement

15.1. The parties shall review the operation of this agreement no later than 1 year after it entered into operation and thereafter every 5 years.

16. Termination of this agreement

16.1. Either party may terminate this agreement upon notice of no less than 3 months' notice. Upon termination, both OISC and the BSB must delete all personal data shared between them under this agreement save as required by law or otherwise by agreement between the parties and must confirm in writing that they have done so.

SIGNATORIES

For BSB:



Name: Mark Neale
Capacity: Director General

15 April 2024

Date

For OISC:



Name: Deirdre Gilchrist
Capacity: Acting Director of Service Delivery

15/04/24

Date