



Data-sharing agreement made between
King's Counsel Appointments
And
The Bar Standards Board

1. Introductory

1.1 This data-sharing agreement is made on 3 February 2025. It replaces the previous Memorandum of Understanding which was signed on 26 March 2021.

1.2 References in this agreement to the UK GDPR are to Regulation (EU) 2016/679 as incorporated, in amended form, into UK law. References to the DPA 2018 are to the Data Protection Act 2018. References to “applicable data protection legislation” or similar are to the UK 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) **King's Counsel Appointments ('KCA')**, whose principal office is Chancery House, 53-64 Chancery Lane, London WC2A 1QS

2.2 The sharing of data under this agreement will be administered on behalf of the BSB by or under the authority of the Head of Barrister Records. The BSB's operation of this

agreement will be subject to the oversight of the Bar Standards Board's Data Protection Officer who can be contacted at DProtection@BarCouncil.org.uk

2.3 The sharing of data under this agreement will be administered on behalf of KCA by or under the authority of the KCA Selection Panel. The KCA's operation of this agreement will be subject to the oversight of KCA's Data Officer who can be contacted at enquiries@kcappointments.org

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, certain legal entities, registered European lawyers and employees of these individuals or entities. The BSB also regulates unregistered barristers pursuant to the BSB Handbook. The BSB's statutory 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 assesses reports and investigates allegations against those it regulates and, if necessary, takes disciplinary action against them. Such reports, allegations, investigations and action taken are recorded in a disciplinary record for the individual or entity concerned.

3.2 The King's Counsel Selection Panel ('the Panel') administers on behalf of KCA the process for considering applications to be appointed King's Counsel (KC) under the scheme agreed between the General Council of the Bar and the Law Society and approved by the Lord Chancellor (Summary of Revised Process for KC Award for England and Wales 23 November 2006 – 'the Process'). KCA is responsible for assessing whether an applicant is suitable to hold the award of KC, and whether the award should be removed from an existing KC, both of which include taking into consideration complaints and findings of professional misconduct. In addition to assessing applications for KC, the KCA also has the power to recommend to the Lord Chancellor the removal of the award of King's Counsel for cause. By agreement with the Ministry of Justice this power only applies to King's Counsel appointed under the agreed Process in or after July 2006.

3.3 In order to discharge these functions properly it is necessary for KCA to take into account the disciplinary record of the individual concerned during the time (if any) when they were subject to regulation by the BSB.

3.4 The purpose of sharing data under this agreement therefore is (a) to allow KCA to fulfil its 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 a request, properly formulated in accordance with section [12] below, the BSB will share with KCA such information as it presently holds consisting of the agreed categories of disclosure which are required and can properly be disclosed, subject to the BSB disclosure policy and principles applicable at the date of the request, as follows:

- a) Summary details of any disciplinary findings for professional misconduct made against each barrister and, where applicable, information about whether the finding is open to, or subject to, appeal;
- b) Relevant reports which are in the public domain that support the findings in (a); and
- c) Summary details of any pending allegations which have been referred to disciplinary action but have not yet been determined.

4.2 Where there is no relevant information recorded against a barrister, the BSB will ensure that this is recorded in its written return to the KCA.

5. Lawful basis for sharing data

5.1 The principal basis for the sharing of data under this agreement shall be the consent of the data subject, pursuant to UK GDPR Art 6(1)(a), which KCA shall obtain and record prior to requesting disclosure.

5.2 Without prejudice to their agreement that data subject consent shall be the principal basis for data sharing pursuant to GDPR Art 6(1)(a), the parties also record that they consider themselves entitled to share data under this agreement pursuant to GDPR Art 6(1) (e) ("processing necessary for a task carried out in the public interest...").

5.3 The legal basis for the BSB to share data pursuant to UK GDPR Art 6(1)(e) is set out in regulations on disclosure of confidential reports/allegations as set out in rE64.4, rE64.5 and RE64.7 of the Enforcement Decision Regulations 2019 (EDRs) of the BSB Handbook, as follows: "Disclosure may be made:

- .4 where the applicable person consents; or

.5 in response to a request from the selection panel or a member of its secretariat in respect of an application by a barrister for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body or the authorised individual for a certificate of good standing in respect of a barrister; or

.7 with the approval of the Commissioner, where the Commissioner considers it is in the public interest to disclose some or all of the details of the report or allegation.”

5.4 The legal basis for the KCA to share data pursuant to UK GDPR Art 6(1) is:

- a. the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- b. processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; and
- e. processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

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 UK GDPR Art 9 and/or personal data relating to criminal convictions and offences as defined in UK GDPR Art 10 and DPA 2018, s11(2) (“crime data”).

6.2 Where that is the case, the BSB will only share such data where the data subject has given explicit consent or where some other condition set out in UK 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 Each year, at an early stage in the KC Competition, the KCA Secretariat will send a list of barrister applicants confidentially to the designated member of staff at the BSB, requesting that disciplinary history checks are made.

7.2 The BSB will share data with KCA under this agreement only in response to a valid request in accordance with section [12] below made for the purpose of assessing the suitability of the data subject for appointment to, or to hold, the award of King’s Counsel (KC). When

proposing to share data with KCA under this agreement, the BSB will first have regard to any information sharing policies that are in place at the time of the request.

7.3 The BSB will inform the KCA Secretariat of any finding against any King's Counsel of professional misconduct and any sanction imposed within 28 days of the expiry of any appeal period (if applicable). In doing so, it will provide the same information as outlined in paragraph 4.1 (a) and (b) above.

7.4 KCA will refer any third party seeking to make a report of a concern about a barrister holding the title of King's Counsel, or barrister applicant for King's Counsel, to the BSB.

8. Accuracy of data

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

8.2 In response to a further request from the KCA later in the KC Competition process, the BSB will update information provided previously under paragraph 4.1, including informing KCA of any new relevant information that has arisen during the intervening period.

8.3 The KCA will ask data subjects to supply their Bar Member Number on application to ensure that the correct data is disclosed.

9. Format of data

9.1 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 KCA and are not prone to corruption due to incompatibilities between the parties' data processing systems.

10. Use and retention of shared data

10.1 KCA will use personal data disclosed by the BSB under this agreement strictly for the purpose of determining the data subject's application for appointment as King's Counsel and any matters directly related to that determination. It will also be used in relation to removal of the award of King's Counsel for cause and related purposes. KCA will retain the disclosed personal data only for so long as is necessary for those purposes.

10.2 For the sake of clarity, the KCA agrees to keep all information provided by the BSB confidential subject to the terms of this DSA and handle it in accordance with any relevant applicable legislation including the Data Protection Act 2018.

11. Security of data

11.1 KCA 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. When sending personal data to the BSB, KCA will do so by emailing a password protected Excel file sent to DisciplinaryChecks@barstandardsboard.org.uk. Access to this inbox within the BSB is restricted to relevant staff only.

11.2 The BSB will treat the fact of an application for appointment as KC as confidential, including any year(s) in which the applicant applies.

11.3 When responding to a request, the BSB will transmit the requested data by emailing a password protected Excel file sent to the staff member who sent the original request, at a KCA email address.

11.4 In the event that KCA suffers a Personal Data Breach that concerns or may concern any personal data disclosed to it by the BSB pursuant to this agreement in circumstances in which KCA is required under UK GDPR Article 33 to notify the Information Commissioner and/or under UK GDPR Article 34 to notify the data subject, KCA shall also notify the BSB within the same time frame as required under these articles.

12. Requests and responses under this agreement

12.1 Any request for personal data made by KCA under this agreement shall (a) state that it is a request made under this agreement; (b) provide sufficient information to enable the BSB to identify the data subject to whom it relates; (c) state the purpose for the request; (d) confirm that the data subject has given consent (including in the case of “special category” data or “crime” data, explicit consent) to their data being obtained from the BSB, or alternatively (e) explain why disclosure is required in the absence of consent (or as the case may be, explicit consent).

12.2 The BSB will normally respond to a request made under this agreement within 20 working days (unless otherwise agreed by the parties) 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.

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

13.1 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 UK GDPR Art 15 and other assertions of rights by data subjects under UK GDPR Chapter III or other applicable data protection legislation.

13.2 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. Review of this agreement

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

15. Termination of this agreement

15.1 Either party may terminate this agreement upon six months' notice. Upon termination, KCA must delete all personal data shared with it under this agreement save as required by law or otherwise by agreement between the parties and must confirm in writing that it has done so.

Signature:



Date: 3 February 2025

Hannah Miller

Chief Executive KCA Appointments Secretariat – On behalf of KCA



Signature:

Date: 3 February 2025

Saima Hirji

Director of Regulatory Enforcement – On behalf of the BSB