

# **Privacy Notice**

## **David Brynmor Thomas KC**

### **Introduction**

The United Kingdom's General Data Protection Regulation 2018 ("GDPR"), as supplemented by the Data Protection Act 2018 ("DPA"), requires that I provide you or your client with a Privacy Notice.

This Privacy Notice therefore sets out the basis upon which I process, use, share and retain information which I collect and receive from individual parties, witnesses and other data subjects in my capacity as an arbitrator, mediator, or other neutral ("Arbitrator") appointed in the dispute to which you or your client is a party.

The GDPR applies only to personal data of identifiable or identified living natural persons and does not extend to the processing of information which concerns legal persons such as corporations. It extends to persons outside the European Union whose information I process.

### **Who I am - Data Controller**

I am a barrister, practising full time as an Arbitrator. I registered as a Data Controller for the personal data that I hold and process. When appointed an Arbitrator I am a data controller for those purposes. Where any practice manager or member of staff engaged on my behalf obtains personal data relating to an Arbitration where I am an Arbitrator or prospective Arbitrator, I remain the data controller.

### **Data Subjects**

The GDPR provides for protection of personal data both when collected:

- directly from the data subject and
- when collected indirectly from a data subject.

Data Controllers are obliged to provide privacy notices in both cases, but in the latter case may be excused if this is either impossible or requires disproportionate effort.

In the course of an Arbitration as an Arbitrator I may not have direct contact with some of the data subjects whose information I process, nor might it be appropriate for me to have such

contact. Accordingly, all recipients of this Privacy Notice should, in so far as applicable, draw this Privacy Notice to the attention of all data subjects whose personal data I might receive, whether directly or indirectly, during the course of this arbitration.

This can be accomplished either by sending them a copy of the Privacy Notice or by drawing their attention to the Privacy Notice on my website profile page which is at: <http://www.davidbrynmorthomaskc.com/>.

### **The collection and processing of data**

When appointed as an arbitrator it is necessary for me to collect and process information during the course of the proceedings, including personal data relating to natural persons, to enable me to determine the dispute.

Such information will include information relating to an identifiable data subject i.e. an individual natural person. That may be obtained either directly from a party, or received through a party's legal advisers and counsel, or from co-arbitrators or from an arbitral institution.

Data may include personal data which is contained in witness statements, experts' reports, documents, pleadings and memorials and any other information sent to me in my capacity as Arbitrator in an arbitral dispute.

The nature of the information received will vary from case to case.

In addition, I may receive personal data ("Special Category Data") revealing:

- health;
- racial or ethnic origin;
- political opinions;
- religious or philosophical beliefs;
- trade union membership;
- genetic data;
- biometric data; and
- data concerning a person's health, sex life or sexual orientation; or

personal data ("Criminal Offence Data") relating to:

- criminal offences,
- alleged offences,
- convictions or sentences, or
- related security measures.

A practice manager or member of staff engaged on my behalf may also collect and process personal data relating to an Arbitration when an enquiry is made as to whether I am able to agree to an appointment as an Arbitrator and for the purpose of agreeing the terms on which I will do so or for other administrative purposes such as collecting fees.

### **Purpose for which Personal Data is Processed**

I may process personal data for the following necessary purposes:

- To determine the dispute;
- To determine whether I may accept an appointment as Arbitrator and upon what terms;
- To deal with any queries or issues as to my services as an Arbitrator that may arise during or after the dispute such as challenges, appeals, (whether under the Arbitration Act 1996 or otherwise) and other enforcement issues relating to an arbitration whether in the UK or otherwise;
- In relation to collection of or any dispute concerning my fees;
- For the preparation of accounts or tax returns;
- To keep appropriate records to comply with the GDPR;
- To check conflicts for the purpose of future Arbitration appointments;
- To investigate or address any threatened or actual legal proceedings relating to the use of my services as an Arbitrator or as otherwise allowed by applicable law;
- To comply with any legal obligations under:
  - the Proceeds of Crime Act 2002,
  - the Terrorism Act 2006,
  - the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 or
  - under any similar legislation that may be in force from time to time
- To keep records so as to comply with any requirements of the Bar Standards Board or other relevant professional body;

- As otherwise ordered by a court, regulatory or statutory tribunal or other legal body or to comply with any legal obligation.

### **The Recipients of Such Personal Data**

I may share personal data, where it is lawful and necessary, with the following persons or categories of persons and entities:

- My co-arbitrators (if any);
- The Tribunal Secretary (if any);
- The appointing/administering arbitral institution (if any);
- Other parties; expert and factual witnesses or potential expert and factual witnesses or their legal representatives; interpreters; transcribers; or others in receipt of such information as part of and during the course of the arbitral proceedings;
- A court or tribunal, should the Arbitration result in any form of legal proceedings including any direct claims made against me, to which I am a party, or in which I am a witness;
- My practice management and staff who provide administrative and clerical services to me;
- Professional regulatory bodies such as the Bar Standards Board in the event of a complaint, for compliance purposes or other legal matter;
- Any legal advisers I may engage to protect my interest in the event of a complaint or to advise and represent me in any court or tribunal or before any regulatory body relating to my role as an Arbitrator in any arbitral proceedings;
- Law enforcement officials, government authorities, or other third parties to meet my legal obligations;
- My professional indemnity insurer.

### **Legal Basis for the Processing**

The GDPR provides that processing is lawful if it is necessary for certain specific purposes.

One or more of the following legal bases apply or may apply to the processing of information by me in relation to any appointment as Arbitrator:

- In furtherance of my or a third party's legitimate interests except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject. Such legitimate interests include:

- Determining disputes referred to me in my capacity as Arbitrator and doing so according to applicable law and in particular fairly and impartially;
- Avoiding conflicts of interest in relation to disputes which are referred to or may be referred to me;
- Ensuring network and information security, including unauthorised access or fraud;
- To comply with any legal obligation to which I am subject;
- To protect the vital interests of the data subject or of another natural person;
- For the performance of a contract, in particular the contract engaging me as an Arbitrator in a dispute and any Arbitration clause therein, or in order to take steps at the request of a data subject prior to entering into a contract;
- The data subject has given consent to the processing of his or her personal data for one or more specific purposes.

The legal basis for the processing by me of Special Category Data is where:

- It is necessary for the establishment, exercise or defence of legal claims; or
- Where the data subject has given explicit consent to such data processing.

The legal basis for the processing by me of personal data relating to any criminal convictions is where:

- It is necessary for the establishment, exercise or defence of legal rights; or
- Where a tribunal is acting in its judicial capacity; or
- Where the data subject has given explicit consent to such data processing.

### **Transfer of Personal Data to a Third Country**

The GDPR provides restrictions on the transfer of personal data outside the European Union to third countries or international organisations. However, it also provides for derogations in specific situations. Depending on the case, it may be necessary for me to transfer personal data to third countries outside the European Union in relation to an Arbitration, for example to parties, legal representatives, co-arbitrators, arbitral institutions or others.

One or more of the following GDPR derogations apply or may apply in such situations, namely:

- that such transfer is necessary in one or more of the following circumstances, namely it is necessary:

- to perform a contract between the data subject and the controller or to implement precontractual measures taken at the data subject's request;
- to conclude or perform a contract concluded in the interest of the data subject between the controller and another natural or legal person;
- for important reasons of public interest;
- for the establishment, exercise or defence of legal claims;
- the data subject has given informed and explicit consent.

### **Retention of Personal Data**

A. I shall, subject to the exceptions in (B) to (D) below, retain all necessary personal data for seven years (at which point I shall destroy it) from whichever is the appropriate time as set out below:

- The expiry of any right to appeal following a final award according to applicable law and/or the seat of the Arbitration;
- The consent of the parties whether in a procedural order, Terms of Reference or other written form;
- If specifically asked by one or more of the parties to retain the information for longer;
- The final settlement or withdrawal of an Arbitration;
- When informed or made aware of an enforcement issue which may require that I retain the information for longer.

B. I shall, however destroy all hard copy material no later than 12 months and often sooner following the relevant step set out in A above and provided that:

- I am not legally prevented from doing so;
- there is no unresolved issue or claim between the parties;
- I am not asked to retain it for longer; and
- subject to the exceptions set out in (C) and (D) below.

C. I shall retain personal data relating to an Arbitration in excess of the periods described respectively in (A) and (B) above for as long as necessary to enable me to comply with conflicts and to check as to confidential information relating to any future Arbitration or case in which I may be instructed as counsel. This will include Awards and any other limited information I deem necessary to retain to carry out such a conflicts or confidentiality check.

D. I may also retain the following for as long as necessary personal data contained in:

- records of processing which I am required by the GDPR to maintain or to demonstrate compliance therewith;
- records that I am required to keep to make disclosures of suspicious circumstances to comply with certain legislation for the periods specified in the legislation;
- records relating to any complaint to any professional body will be retained for a period of 6 years from the determination of the complaint or such other period as is specified in the relevant rules.

## **Your Rights**

The GDPR gives a data subject whose information is processed by me certain rights concerning his or her personal data including the right to access or erase that information, correct inaccuracies and restrict processing.

Any such request should be made to [privacy@davidbrynmorthomaskc.com](mailto:privacy@davidbrynmorthomaskc.com).

I may be compelled in the interests of fairness to copy any such request to the other parties in the Arbitration if not already copied to them.

However, these entitlements may be subject to certain exceptions in the GDPR and DPA such as Articles 15(4) and 17(3)(e) of the GDPR and Schedule 2 paragraphs 5(3) and 12 of the DPA.

Data subjects also have a right to make a complaint regarding the treatment of their personal data to the Information Commissioner's Office ("ICO"). Further details of these rights are set out in Article 15-20 of the GDPR and the ICO's website

[http://ico.org.uk/for\\_the\\_public/personal\\_information](http://ico.org.uk/for_the_public/personal_information).

## **Protection of Information**

I will take appropriate measures to protect personal data received by me relating to any Arbitration or prospective Arbitration. However, I can only do so if parties and their legal advisers take similar steps. In particular, any memory sticks or flash drives must be encrypted with passwords sent separately.

## **Revisions to this Privacy Notice and Other Privacy Notices**

If I make changes of any significance to this Privacy Notice I will advise you by e-mail.

Insofar as there is any inconsistency between this Privacy Notice and any separate and more general privacy notice referable to arbitrators on the Newmans Row website, this Privacy Notice should prevail.

**17 August 2024**