

**THE LEGAL RECORDS AT RISK (LRAR) PROJECT**

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<http://ials.sas.ac.uk/research/areas-research/legal-records-risk-lrar-project>

## **Legal Records at Risk Guideline 1: current advice available to legal institutions on managing and disposing of records**

All organisations, whether public or private, have a duty to their clients and stakeholders to manage the records they hold effectively and in compliance with relevant legislation or regulations. The legal profession is no exception. This guideline seeks to summarise published advice at this time, both generic and targeted to legal practitioners, on best practice in managing information and records in the UK.

It is recommended that institutions specialised to law wishing to improve their information and records management (IRM) familiarise themselves with both the specific guidance provided by the representatives of and regulators for their legal specialism and with generic advice provided by IRM experts such as The National Archives.

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## Part 1: Guidance from the legal profession to its members

Arbitrators and mediators: the guidance below primarily covers confidentiality, emphasising the confidential nature of arbitration and mediation proceedings as follows:

- International Court of Arbitration: [Rules](#) of Arbitration Article 6: Confidentiality
- [European Code of Conduct for Mediators](#) s.4
- Chartered Institute of Arbitrators: [Practice guideline 1: Confidentiality in mediation](#). This guideline also advises that records should be destroyed or returned to the parties following a decision.
- Civil Mediation Council [Guidance note no 1: mediation confidentiality - 8th July 2009](#)

Barristers: the Bar Standards Board [Handbook](#) recommends that a record keeping policy be drawn up to identify compliance and records retention requirements.

Licensed Conveyancers: the Council for Licensed Conveyancers' [Handbook](#) advises on maintenance of proper records, compliance and retention of financial records.

Notaries: the [Faculty Office Code of Practice for Notaries](#) has rules for [Record Keeping and File Storage \(Chapter 17\)](#), including advice on records destruction or transfer to an archive approved by the Master of the Faculties.

Patent Attorneys and Trade Mark Attorneys: the Chartered Institutes of Patent Attorneys and Trade Mark Attorneys have produced joint [Business practice guidance](#) on ownership, storage and confidentiality of files.

Solicitors: The Law Society provides a great deal of good advice on managing records, including the following Practice Notes:

- [Depositing records and documents with public sector archives](#)
- [Retention of wills and probate practice note](#)
- [Retention of trusts practice note](#)
- [Information security](#)
- [Business continuity](#)
- [Data protection](#)
- [Cloud computing](#)
- [File closure management](#)

The Solicitors' Regulation Authority gives advice on good business practice, confidentiality and record keeping in the following:

- [SRA Code of Conduct 2011](#)
- [SRA Handbook](#)
- [Closing down your practice: regulatory requirements](#)
- The new [Statement of solicitor competence](#) also includes a section (Section D) on the need to "keep, use and maintain accurate, complete and clear records, including:

- a. Making effective use of information management systems (whether electronic or hard copy), including storing and retrieving information
- b. Complying with confidentiality, security, data protection and file retention and destruction requirements”.

Lexis Nexis provides comprehensive guidance on managing records in this document:

[Records Management: Current Issues in Retention, Destruction, and E-Discovery](#)

Lexcel also gives advice on file and case management here: [England and Wales Standard v.6 for legal practices](#)

Individual law firms have published excellent guidance for legal practitioners in specific areas of document management eg:

- Bristows LLP in conjunction with Iron Mountain, **Document retention guide United Kingdom 2013**
- Herbert Smith, **Document Retention in England and Wales: law, practice and cross-border issues**, 2011
- Herbert Smith Freehills, [Document Retention: an International Review](#), Legal Guide, Second Edition, 2013

Will writers:

- The Society of Will Writers’ [Code of Practice](#) specifies that procedural records and records of transactions must be kept, including a written record of complaints (s.8.7). The Society also publishes a [Practitioner’s Guide to file retention](#) which contains advice on what information in addition to wills should be included in a client file and when files can be disposed of.
- The Institution of Will Writers’ [Code of Practice](#) gives guidance on the correct storage and protection of client records.

## Part 2: Generic information and records management advice

There is a plethora of both international and UK-specific IRM guidance publicly available to private sector organisations, though care should be taken to distinguish disinterested advice from that which, though often very sound, may be offered as part of an advertising campaign for the sale of bespoke services and storage systems. A small selection of best practice guidance provided by IRM practitioner organisations in the UK is listed below. Excellent advice is also available from international IRM organisations such as [AIIM](#) (Association of Information and Imaging Management) and [ARMA International](#) and commercial service providers like [Iron Mountain](#).

The National Archives offers detailed and comprehensive guidance here on numerous topics such as managing information risk, managing digital records including emails and disposing of records: <http://www.nationalarchives.gov.uk/information-management/>.

The Archives and Records Association has produced the excellent [Don't Risk It! Know Your Records Campaign](#) including a toolkit aimed specifically at individuals with record keeping responsibilities within organisations.

The Information and Records Management Society has produced a number of [guides](#) on topics such as data security, digital records preservation, records retention and disposal, developing IRM programmes and standards and outsourcing IRM.

The Information Commissioner's Office (ICO) offers [advice for organisations](#) in both the public and private sectors on data protection and privacy and electronic communications. It also produces a wide range of [leaflets, briefing notes, guides and training materials](#) for both individuals and organisations, plus a selection of CDs and DVDs.

In 2014 the ICO gave a specific warning and clear advice to barristers and solicitors on ensuring the security of the information they hold, following a number of data breaches (**ICO blog** 5 August 2014). The ICO publicly names and shames organisations and individuals which have been found guilty of such breaches.