

Institute of Advanced Legal Studies

The 3rd Legal Records at Risk seminar
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Legal records, confidentiality and access: breaking
down the barriers

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Clients' records – legal constraints on access

- Privilege
- Confidentiality
- Documents in litigation

Clients' records – privilege

- Context:
 - Parties to litigation must disclose relevant documents (hard copy or electronic) to each other – whether or not confidential
- Legal professional privilege:
 - Party may nonetheless withhold from inspection any documents
 - by which legal advice is sought or given or
 - brought into being for purposes of litigation
- Irrelevant for present purposes

Clients' records – confidentiality

- Duty:
 - “A solicitor must keep the affairs of clients ... confidential except where disclosure is required or permitted by law or by the client”

Halsbury's Laws of England, 5th ed., vol. 65, para. 538
- Applies equally to affairs of former clients
- Applies equally to affairs of dead clients
 - No time-limit
 - Outlasts executors or administrators
 - Breached merely by passing material to an archive
 - Not helped by data protection legislation

Clients' records – documents in litigation

- Lawyers may have possession of documents from their opponents in litigation
- CPR r. 31.22:
 - (1) A party to whom a document has been disclosed may use the document only for the purpose of the proceedings in which it is disclosed, except where –
 - (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
 - (b) the court gives permission; or
 - (c) the party who disclosed the document and the person to whom the document belongs agree.
 - (2) The court may make an order restricting or prohibiting the use of a document which has been disclosed, even where the document has been read to or by the court, or referred to, at a hearing which has been held in public.

Lawyers' records – legal constraints on access

- Lawyers' records:
 - Constitutions
 - Minutes of meetings
 - Financial records
 - Regulatory matters
- Duty of confidentiality?
 - Between partners – and former partners
 - By directors or employees of corporate firm
 - Between members of chambers

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