



PROTOCOL ON CLIENT CONFIDENTIALITY

Introduction

1. Members of Chambers (“3VB” or “Chambers”) regularly appear on opposite sides in the same case, or act as arbitrators or judges in disputes where other members of 3VB are instructed as counsel for one or other of the parties. This is a practice which is permitted by the Bar professional conduct rules and has been recognised on many occasions, both judicially and in arbitration awards. Unlike a law firm, members of Chambers do not practise in partnership. Each barrister owes a duty of confidence to his or her clients, and confidential client information may not be shared or discussed between barristers.
2. This protocol describes the systems adopted by 3VB’s members, practice managers and administrative staff to prevent any inadvertent disclosure of confidential information. The term “client” in this context refers both to the law firm instructing members of 3VB and the lay client as appropriate.
3. The development of this protocol has considered the general law, relevant provisions of the Bar Standards Board (BSB) Handbook, including the Bar’s Code of Conduct and scope of practice rules, and guidelines provided by the Bar Council of England & Wales and the International Bar Association.
4. The purpose of this protocol is to set out the general system of practice and administration at 3VB with the aim of avoiding any inadvertent breach of confidence. Should they so wish, a client may discuss with instructed counsel and practice manager a bespoke agreement to govern arrangements for a specific case.
5. This protocol applies generally to the instruction of members of 3VB in both litigation and arbitration (whether as counsel or as arbitrator).
6. This protocol is not exhaustive: it does not deal with circumstances that are governed by the BSB Handbook, for example in relation to whether a barrister must refuse to accept a brief or instructions for reasons of professional embarrassment (such as a conflict of interest or risk of disclosure or misuse of confidential information). Nor, beyond acknowledging the provisions thereof, does this protocol address in any detail matters governed by the IBA Guidelines, for example the specific instances of conflict set out on the Red, Orange and Green Lists of those Guidelines.

7. This protocol is broken down into the following sections:

Accepting Instructions
Practice Management
Document Handling
Diary Management
IT and Communication – emails and faxes
Pupil Barristers
Breaches

Accepting Instructions

8. Our Practice Managers are experienced in dealing with sensitive information and in cases where members of 3VB are instructed for different parties to a particular case, information barriers are in place to avoid a conflict of interest or inadvertent disclosure of confidential information.
9. The following principles are adhered to when accepting instructions on behalf of members of 3VB (also referred to herein as “counsel”).
- 9.1. At the outset of litigation there may be a time when a party may not want the fact that they have taken legal advice to be known otherwise than to their advisers. The fact that a member of 3VB has been instructed will be kept confidential.
- 9.2. That concern will cease to be of relevance if, for example the instructing client authorises the disclosure of the fact that a member of 3VB has been instructed as counsel or appointed as arbitrator (including through taking steps in open court proceedings) or that fact ceases to be confidential, for example by counsel signing his or her name to a pleading (once the pleading becomes public) or by appearing in court at a contested hearing.
10. Where it is necessary for the fact of instructions to remain confidential, practice managers and the client may arrange at the outset for the instructions to be sent down under a suitably anonymous project name, so that the names of the client and of the intended opponent(s) do not appear on the face of any document or in any Chambers record or diary.



11. If members of 3VB are acting for parties on the opposite side of the same case and/or for parties with conflicting interests (whether as counsel or arbitrator), the practice managers will ensure that all instructions are handled appropriately. The steps that will be taken include the following:
 - 11.1. Each member of 3VB (or team of members) involved in such a case will have a different practice manager.
 - 11.2. A supervisor is appointed within Chambers to monitor the implementation of this protocol. The current supervisor is the Chambers Director, Stewart Thompson.
 - 11.3. The supervisor will check on the implementation of this protocol in applicable cases by making regular enquiries of the practice managers handling the cases for the relevant members of 3VB and checking that the necessary information barriers remain in place.
 - 11.4. If any issue arises in a case to which this protocol applies, the relevant practice manager will raise that issue with the supervisor. The supervisor may, in turn, if he deems it necessary, raise the issue with Chambers' Management Board, bearing in mind any specific conflict issues regarding individual members of the Management Board.

Practice Management

12. Where members of 3VB appear against each other, arrangements are made for each member to have separate practice management. The client will be informed so that they deal only with the relevant practice manager.
13. Any necessary practical steps will also be taken to preserve confidentiality as between the two practice managers or practice management teams. Examples of these practical steps include establishing appropriate access permissions and restrictions in case management software, ceasing, or restricting the use of centralised administrative support and developing specialised delivery arrangements for hard-copy documents.

Document Management

14. The priority in this regard is that papers be kept confidential to the counsel working on the case.



15. Where confidentiality is a concern, then even if the fact that another counsel at 3VB has been instructed is no longer confidential as between rival parties, it is advised that the client should use a project name for a given case, to remove any indication on the outside of papers as to what matter they relate to.

Delivery and receipt of confidential documents

16. When papers are received for a particular member of 3VB, they are delivered to the member in question, whether by being placed in his or her room or otherwise inconspicuously in a pigeonhole.
17. Where particularly sensitive documents are to be delivered, the instructing client should indicate as much to counsel's practice manager so that arrangements can be made between them to ensure security.

Storage

18. Papers delivered to a member of 3VB will, once collected by that member of Chambers, be kept in his or her room or another room designated for that purpose. Papers are not left in public spaces within Chambers. Barristers will always lock their room when they have confidential papers in their custody and are likely to be away from the room for a significant period.
19. Should it be deemed necessary by the instructing client, special precautions (such as the installation of a safe or the designation of a particular room to which an additional lock is fitted) will be taken and/or the installation of additional CCTV services to monitor their room (3VB already has secure HD CCTV monitoring on its premises).

Disposal of documents

20. Care is also taken to ensure that confidentiality is not breached during the disposal of documents. Chambers engage specialist contractors to regularly dispose of confidential waste. Otherwise, individual members of 3VB will either send confidential documents back to their instructing solicitors or shred them.

Diary management

21. 3VB uses secure electronic diaries, which prevent one member of Chambers from seeing the engagements of another.



IT and Communication – emails and faxes

Computers and Networks

22. Chambers' network is set up to ensure that no member of Chambers or practice manager has access to another member's files or other client data without specific consent. Similarly, the computers and other electronic devices of each individual member of Chambers and practice manager are set up to preserve security and confidentiality (for example, by being protected by firewalls, encryption software and two-factor authentication).

Emails

23. 3VB has in place systems and procedures for ensuring the confidentiality of all email communications.

24. All members of 3VB have Multifactor authentication (MFA) enforced on devices that can access Chambers IT services¹ and,

- Individual and secure email addresses, which does not allow them to automatically forward email from their 3VB email account to their personal email account(s).
- Secure cloud-based document storage services, (Chambers uses modern, secure communication methods over email; Teams, OneDrive, SharePoint and Tresorit provide greater security through granular access rights management and the ability to revoke access to information).
- Access only to printers that operate using a pin operated system unique to each member of 3VB and PM/PMT,
- Secure Voicemail services, and
- Access to only their own individual LEX diary system.

25. Where necessary, the instructing client should consider whether attachments sent to members of 3VB should be password-protected or otherwise protected to ensure confidentiality.

Faxes

¹ Chambers' IT systems are overseen and monitored by a specialist 3rd party cyber security supplier, that monitors all network traffic 24/7/365. The IT system is periodically tested for known vulnerabilities and weaknesses. Applications hosted and maintained by all 3rd party providers, are tested at least annually and proof of testing is provided by the cyber security supplier. All devices that access 3VB services are required to meet certain security levels at all times. If they do not they are not permitted to access the 3VB service.

26. Some clients still occasionally communicate by fax, and Chambers has procedures for their handling to preserve confidentiality. Faxes are received electronically as an email attachment by administrative staff who are not directly involved in case management and who will be aware of conflict and confidentiality issues. The fax document will be forwarded by email to its intended recipient. Hard copies of faxes are not made as a matter of course and will only be made upon the instruction of the recipient member of 3VB.
27. Arrangements can be made at the request of instructing clients for dedicated confidential fax numbers to be set up. However, given the inherently more secure alternatives available for direct communication and document sharing, it is recommended that the instructing client should in each case consider whether it is preferable for a confidential document to be sent by fax.
28. These are all matters of general importance, but each has relevance in circumstances where barristers in the same set are on opposite sides of a case.

Pupil Barristers

29. 3VB avoids the movement of pupil barristers between members of 3VB who are on opposing sides of the same case. Those members of the Pupillage Committee who allocate pupils to their supervisors are notified of all potential conflicts of this kind via the practice managers.

Breaches

30. In the event of a possible breach of confidence being identified, Chambers will:
 - 30.1. Consider all necessary steps to ensure that damage arising from the breach is minimized.
 - 30.2. Ensure that the member of 3VB in question considers his or her position under the regulatory provisions of the BSB Handbook; and
 - 30.3. Analyse the breach so that the Chambers' procedure can be reviewed, with a view to avoiding repetition.