**Confidential Information**

This element explores your obligations when dealing with confidential information.

**Dealing with Confidential Information**

Lawyers deal with a large amount of confidential information about their clients and other people they deal with. There are a number of legal obligations you have to comply with to protect the confidential nature of the information you deal with. In this element we consider two areas:

• Data Protection Act 2018

• Duty of Confidentiality under the SRA’s Code of Conduct for Solicitors, RELs and RFLs ('CCS')

**Data Protection Act 2018**

The Data Protection Act 2018 controls how ‘personal data’ about individuals is used by organisations.

Personal data’ means information about a particular living individual. This might be anyone, including a customer, client, employee, partner, member, supporter, business contact, public official or member of the public.

It doesn’t need to be ‘private’ information. Information which is public knowledge or is about someone’s professional life can be personal data.

‘Personal data’ does not include truly anonymous information. However, if you could still identify someone from the details, or by combining it with other information, it will count as personal data.

**Data Protection Principles**

The Data Protection Act contains rules called the ‘data protection principles’. The Act requires that everyone responsible for using personal data must ensure that it is:

· used fairly, lawfully and transparently

· used for specified explicit purposes

· used in a way that is adequate, relevant and limited to only what is necessary

· accurate and, where necessary, kept up to date

· kept for no longer than is necessary

· handled in a way that ensures appropriate security, including protection against unlawful or unauthorised processing, access, loss, destruction or damage

**Duty of Confidentiality**

As a solicitor or legal professional, you owe a duty of confidentiality to your clients.

CCS 6.3: You keep the affairs of current and former clients confidential unless disclosure is required or permitted by law or the client consents

This duty applies to current and former clients. Former clients include clients of a firm you used to work for and clients that used to instruct you but now instruct a different firm. It also continues to apply after a client’s death.

**Duty of Confidentiality: Exceptions**

There are some exceptions to the duty of confidentiality:

CCS 6.3: You keep the affairs of current and former clients confidential unless disclosure is required or permitted by law or the client consents

The duty does not apply where disclosure is required or permitted by law. A number of statutes empower the government and other bodies to require disclosure of documents, eg HMRC or the National Crime Agency, when investigating money laundering. You might also need to disclose information to comply with a court order.

**Duty of Disclosure**

The duty of disclosure is set out in CCS 6.4

This is the principle that you make your client aware of any information material to their case of which you have knowledge.

There are exceptions to this duty, including if you believe that disclosing the information could cause serious physical or mental harm to your client or another person, or disclosure is prohibited by legal restrictions, or by the duty of disclosure to another client.

**Summary**

As a legal professional you will deal with a large amount of confidential information.You will need to comply with a number of legal obligations to protect the confidential information. You will need to process personal data about individuals in accordance with the provisions in the Data Protection Act 2018. You have a duty under CCS 6.3 to keep the affairs of clients and former clients confidential.There are a limited number of exceptions to the duty of confidentiality. You also have a duty under CCS 6.4 to make your client aware of all information material to the matter of which you have knowledge.There are exceptions to this duty.