

Avoiding Penalties from the Information Commissioner's Office
A short note for PIBA

The Information Commissioner... why have I heard of that catchy title before?

All barristers should be registered with the Information Commissioner's Office ["ICO"] as a Data Controller. This is because you have personal information about individuals relating to your work on your computer and in your papers and you control this information. You have to pay £35 annually for the privilege.

I've paid my £35, so that's that isn't it?

Not so fast. As a Data Controller you have to process data in compliance with the Data Protection Act 1988. If you breach the Data Protection Act, the ICO can inflict a financial penalty or prosecute.

Really? How might I be in breach of the Act?

In a whole host of ways: failing to have data encrypted; losing papers; losing computers/PDAs/notebooks; not using passwords...

I would never be so careless as to leave my files on a train. I'll be OK won't I?

If thieves steal your physical data or electronic device on which data is stored but is not sufficiently protected, you could still be in breach of the Act.

In 2011 the Solicitor's Journal reported on the case of a Scottish Advocate, Ruth Crawford QC, whose laptop was stolen from her home during a burglary. She did not have adequate encryption on her laptop and only escaped a fine because the theft took place before the ICO's powers to impose a monetary fine came into force. Instead she had to give written undertaking as to future steps to protect data. Read more here:

www.solicitorsjournal.com/news/regulation/conduct/lawyers-failure-encrypt-laptop-breached-data-protection-laws

Oh dear – what could the financial damage be?

The ICO has the power to levy a maximum penalty of £500,000. It has already started flexing its muscles. In 2012 a fine of £70,000 was imposed on the London Borough of Lewisham. A social worker left a carrier bag of papers relating to children who were subject to care proceedings on a train. Although it ended up at the lost property office a few days later, this was a significant breach of the Act.

Also in 2012, Greater Manchester Police were fined £150,000 for breach of the Act. A USB stick containing the names and details of over £1,000 individuals involved in crime was stolen from a police officer's home during a burglary. The USB stick was not password protected or encrypted. It was never found.

These examples illustrate the similar kind of way that barristers could easily fall foul of the Act and become vulnerable to a financial penalty imposed by the ICO.

But surely the Bar Mutual will cover this kind of penalty?

No, your insurance with the Bar Mutual does not cover penalties imposed by the ICO or legal costs if you are prosecuted by the ICO.

Is there any insurer that covers this risk?

Yes. If you have top-up insurance with TLO, this includes cover up to £500,000 for legal representation costs, and fines (where legally insurable), arising out of a breach of the Data Protection Act or other similar data protection legislation. It is also possible for barristers without top-up insurance to purchase this Data Risks cover separately. TLO offer a discount if all members of Chambers wish to purchase collectively and state that *potentially* the cost could be less than £100 each.

Where can I learn more about this subject?

The Bar Council gives guidelines on information security here:

www.barcouncil.org.uk/3206.aspx

The ICO also provides oodles of guidance here:

www.ico.org.uk

Hardwicke Barrister Graham Cunningham has written for Counsel magazine in on the subject and you can access his articles here (available to Counsel premium subscribers):

[www.counselmagazine.co.uk/ln-search?search_api_views_fulltext=graham+cunningham&sort by=search_api_relevance&sort_order=DESC](http://www.counselmagazine.co.uk/ln-search?search_api_views_fulltext=graham+cunningham&sort%20by=search_api_relevance&sort_order=DESC)

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