

## **Appendix to Data Protection Policy**

### **Appropriate Policy Document for Special Categories of Personal Data**

As part of our corporate functions, we process sensitive personal information and criminal records information in accordance with the requirements of the General Data Protection Regulation (the "GDPR") and the Data Protection Act 2018 (the "DPA").

Some of the conditions for processing sensitive personal information and criminal records information require us to have an Appropriate Policy Document in place under the DPA. This Appendix sets out that document, which explains our procedures for securing compliance with the data protection principles.

### **Description of information processed**

We process sensitive personal information in relation to:

- 1 Our employees – for example, health information relating to disabilities and sickness absences, trade union membership, religious beliefs and marital status; and
- 2 Our tenants / service users – for example, health information relating to housing requirements, service needs and equality information.

We also process criminal records information for our employees and tenants / service users regarding actual and alleged criminal offences, including anti-social behaviour.

Further examples are set out below in this Appendix.

### **Conditions for processing**

We process sensitive personal information under the following conditions:

- Article 9(2)(a) of the GDPR – explicit consent. Examples of our processing include collecting dietary requirements and health information from visitors who require reasonable adjustments to access our premises / services.
- Article 9(2)(b) of the GDPR and Paragraph 1(1) of Part 1 of Schedule 1 to the DPA – where processing is necessary for the purposes of performing or exercising obligations or rights in connection with employment, social security or social protection. Examples of our processing include staff sickness absences.
- Article 9(2)(f) of the GDPR – to establish, exercise or defend legal claims. Examples of our processing include processing relating to any employment tribunal, eviction action or other litigation.
- Article 9(2)(c) of the GDPR – where processing is necessary to protect the vital interests of an individual. An example of our processing would be using health information about an individual in a medical emergency.
- Article 9(2)(g) of the GDPR – reasons of substantial public interest, including:
  - Paragraph 6(1) and 6(2)(a) of Part 2 of Schedule 1 to the DPA – where processing is necessary for the purpose of exercising a function conferred by an enactment or rule of law and for reasons of substantial public interest. Examples of our processing include collecting information from tenants / service users in order to assess and meet their housing needs, ensure that we are delivering services in a manner that promotes equal opportunities and complying with our public functions as a social landlord, including our regulatory reporting requirements;
  - Paragraph 8(1) of Part 2 of Schedule 1 to the DPA – where processing is necessary for the purposes of identifying or keeping under review the existence or absence of equality of opportunity or treatment between groups of people specified in relation to that category with a view to enabling such equality to be promoted or maintained. This only applies to processing of personal information revealing racial or ethnic origin and religious or philosophical beliefs and concerning health and sexual orientation. Examples of our processing include collecting equality information in order to promote equal opportunities and ensure that our equality policies are evidence-based;
  - Paragraph 10(1) of Part 2 of Schedule 1 to the DPA – where processing is necessary to prevent or detect unlawful acts. Examples of our processing include where we report matters to the Police, local authorities or other regulatory bodies;
  - Paragraph 12(1) of Part 2 of Schedule 1 to the DPA – where processing is necessary to comply with, or assist other persons to comply with, a

regulatory requirement involving establishing whether another person has committed an unlawful act or been involved in dishonesty, malpractice or other seriously improper conduct. Examples of our processing include where we investigate and report matters to regulatory authorities or assist with their investigations;

- Paragraph 16(1) of Part 2 of Schedule 1 to the DPA – where processing is carried out by a not-for-profit body providing support to individuals with a particular disability or medical condition for the purposes of raising awareness or providing those individuals with support. This only applies to personal information revealing racial or ethnic origin, genetic or biometric data, personal information concerning health and sex life or sexual orientation. Examples of our processing include providing care and support services to our tenants / service users and furthering our charitable purposes to relieve those in need, including those at risk of homelessness;
- Paragraph 18(1) of Part 2 of Schedule 1 to the DPA – where processing is necessary to protect an individual from neglect or physical, mental or emotional harm or to protect the physical, mental or emotional well-being of an individual where the individual is aged under 18 or aged 18 or over and at risk. Examples of our processing include where we receive reports of tenants / services users at risk and need to take steps to ensure their safety; and
- Paragraph 24(1) of Part 2 of Schedule 1 to the DPA – where processing consists of disclosure of personal information to an elected representative or person acting with the authority of an elected representative and is in response to a communication to us from that representative or person in response to a request from an individual. Examples of our processing include responding to requests for information from MSPs and MPs acting on behalf of their local constituents.

We process criminal records information under the following conditions:

- Article 10 of the GDPR and Paragraph 1(1) of Part 1 of Schedule 1 to the DPA – where processing is necessary for the purposes of performing or exercising obligations or rights in connection with employment, social security or social protection. Examples of our processing include pre-employment checks and declarations by an employee in line with contractual obligations.
- Article 9(2)(f) of the GDPR – to establish, exercise or defend legal claims. Examples of our processing include processing relating to any employment tribunal, eviction action or other litigation.

- Article 9(2)(g) of the GDPR – reasons of substantial public interest under Paragraph 36 of Part 3 of Schedule 1 to the DPA, including:
  - Paragraph 6(1) and 6(2)(a) of Part 2 of Schedule 1 to the DPA – where processing is necessary for the purpose of exercising a function conferred by an enactment or rule of law and for reasons of substantial public interest. Examples of our processing include complying with our public functions as a social landlord, including our regulatory reporting requirements;
  - Paragraph 10(1) of Part 2 of Schedule 1 to the DPA – where processing is necessary to prevent or detect unlawful acts. Examples of our processing include where we report matters to the Police, local authorities or other regulatory bodies;
  - Paragraph 12(1) of Part 2 of Schedule 1 to the DPA – where processing is necessary to comply with, or assist other persons to comply with, a regulatory requirement involving establishing whether another person has committed an unlawful act or been involved in dishonesty, malpractice or other seriously improper conduct. Examples of our processing include where we investigate and report matters to regulatory authorities or assist with their investigations;
  - Paragraph 18(1) of Part 2 of Schedule 1 to the DPA – where processing is necessary to protect an individual from neglect or physical, mental or emotional harm or to protect the physical, mental or emotional well-being of an individual where the individual is aged under 18 or aged 18 or over and at risk. Examples of our processing include where we receive reports of tenants / services users at risk and need to take steps to ensure their safety; and
  - Paragraph 24(1) of Part 2 of Schedule 1 to the DPA – where processing consists of disclosure of personal information to an elected representative or person acting with the authority of an elected representative and is in response to a communication to us from that representative or person in response to a request from an individual. Examples of our processing include responding to requests for information from MSPs and MPs acting on behalf of their local constituents.
- Paragraph 33 of Part 3 of Schedule 1 to the DPA – where processing is necessary for legal proceedings, obtaining legal advice or otherwise to establish, exercise or defending legal rights. Examples of our processing include collecting information in relation to potential breaches of contracts of employment and tenancy agreements in order to take advice or action in relation to these.

### **Procedures for ensuring compliance with the data protection principles**

Our Data Protection Policy sets out the measures that we have put in place to meet the requirements of the accountability data protection principle to demonstrate our compliance with the rest of the data protection principles. These include:

- Documentation of processing activities following our data audit, which is refreshed on a regular basis;
- Having in place appropriate data protection policies, as set out in our data protection handbook; and
- Undertaking data protection impact assessments (DPIAs) where required.

We will ensure compliance with the data protection principles as follows:

- **Lawfulness, fairness and transparency:** We have clear transparency statements and ensure that these are made available to individuals upon collection of their personal information by publishing on our website, included in our housing application form and recruitment applications forms.
- **Purpose limitation:** We will not process sensitive personal information for purposes incompatible with the original purpose it was collected for:
  - For job applicants and employees, during the short-listing, interview and decision-making stages, no questions are asked relating to sensitive personal information; and
  - For housing applicants, tenants and services users, we will only ask for sensitive personal information required in order to assess housing and service needs.
- **Data minimisation:** We only keep sensitive personal information that is required for our purposes:
  - For job applicants and employees, if sensitive personal information is received during the recruitment process, for example, the applicant provides it without being asked for it within their CV or during the interview, no record is kept of it and any reference to it is immediately deleted or redacted, and 'right to work' checks are carried out before an offer of employment is made unconditional, and not during the earlier short-listing, interview or decision-making stages; and
  - For housing applicants, tenants and service users our forms only ask for required sensitive personal information and if additional information is received we will consider if we are required to keep this.

- **Accuracy:** Where we become aware that sensitive personal information is inaccurate or out of date, taking into account the purpose we process it for, we will take reasonable steps to ensure that sensitive personal information is deleted or corrected without delay.
- **Storage limitation:** All sensitive personal information processed by us for the purposes set out in this Appendix, unless retained longer for archiving purposes, retained for the periods set out in our Data Retention Policy.
- **Security:** We implement appropriate technical and organisational security measures to protect sensitive personal information as detailed in our Information Security Policy.

### **Retention and erasure**

To determine the appropriate retention period for sensitive personal information we consider the amount, nature and sensitivity of the sensitive personal information, the potential risk of harm from unauthorised disclosure, the purposes for which we process such data and whether we can achieve those purposes through other means and applicable legal requirements.

### **Review**

This Appendix will be reviewed every three years.