

GDPR PRIVACY NOTICE FOR TRUST AND ESTATE BENEFICIARIES

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A privacy notice for use by trustees and personal representatives that complies with the EU General Data Protection Regulation ((EU) 2016/679) (GDPR). Trustees and personal representatives can send this notice to beneficiaries to tell them about the personal data that they hold, how the personal data will to be used and for what purposes.

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ABOUT THIS DOCUMENT

The *General Data Protection Regulation ((EU) 2016/679)* (GDPR), adopted in May 2016, replaces the Data Protection Directive (95/46/EC) and applies in all **member states** without the need for transposition from 25 May 2018.

The GDPR requires trustees and personal representatives (PRs), as data processors, to notify beneficiaries, as data subjects, about their personal data handling practices through a privacy notice, at the time such data is collected or at the first available opportunity after processing of the data commences. This notice may be sent to beneficiaries electronically or in a hard copy. A privacy notice informs data subjects about how the data controller collects, uses, stores, transfers and secures personal data.

Trustees and PRs should tailor this template privacy notice to specifically reflect their actual or anticipated personal data collection and handling practices.

Training should be provided to any third parties who handle personal data on behalf of trustees or PRs in relation to the new requirements under the GDPR and the issues arising in this standard document.

Provision of information to data subjects

The GDPR requires data controllers such as trustees and PRs to provide the data subject with extensive information, including the data controller's identity and the legal basis for the processing. For further information, see *Practice note, GDPR: implications for trustees and personal representatives: Data subject access*.

RESOURCE INFORMATION

RESOURCE ID

w-015-0150

RESOURCE TYPE

Standard document

PUBLICATION DATE

6 June 2018

JURISDICTION

United Kingdom

WHAT IS THE PURPOSE OF THIS DOCUMENT?

[[NAMES OF ALL CURRENT TRUSTEES] OR [NAMES OF ALL PERSONAL REPRESENTATIVES ACTING IN THE ESTATE ADMINISTRATION]] are "data controllers". This means that we are responsible for deciding how we hold and use personal information about you. We are sending you this notice to make you aware of how and why your personal data will be used and how long it will usually be retained for. It provides you with certain information that must be provided by us under the General Data Protection Regulation ((EU) 2016/679) (GDPR).



DATA PROTECTION PRINCIPLES

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The GDPR sets out principles with which data controllers and processors must comply when processing personal data (*Article 5, GDPR*). These principles form the core of the obligations of the data controller and will usually form the basis of any claim that a data controller has not complied with its statutory duties. For further information, see [Practice note, GDPR: implications for trustees and personal representatives: GDPR principles](#).

We will comply with data protection law and principles, which means that your data will be:

- Used lawfully, fairly and in a transparent way.
- Collected only for valid purposes that we have clearly explained to you and not used in any way that is incompatible with those purposes.
- Relevant to the purposes we have told you about and limited only to those purposes.
- So far as possible, accurate and kept up to date.
- Kept only as long as necessary for the purposes we have told you about.
- Kept securely.

THE KIND OF INFORMATION WE HOLD ABOUT YOU

COLLECTING PERSONAL DATA

The GDPR defines personal data as “any information relating to a data subject” (*Article 4(1), GDPR*). A data subject is the identified or identifiable person to whom the personal data relates and, in relation to this document, is, typically, the identified trust or estate beneficiary.

In connection with the administration of **[[NAME OF TRUST] OR the estate of [NAME OF DECEASED] deceased]**, we will collect, store, and use the following categories of personal information about you:

- [The information set out in the [trust deed **OR** will].]
- [The information you have provided when we contacted you about registering with HMRC’s Trusts Registration Service.]
- [Any information you provide to us during the administration.]
- [Information set out in any letter of wishes addressed to us by **[[NAME OF SETTLOR] OR [NAME OF DECEASED TESTATOR]]**.]
- **[[SPECIFY ANY OTHER INFORMATION PROCESSED].]**

HOW IS YOUR PERSONAL INFORMATION COLLECTED?

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Trustees and PRs should ensure that any personal data collected from third parties is listed here, for example where a bankruptcy search is to be carried out using a third party provider.

Additional notification requirements apply to personal data collected from parties other than the individual directly (*Article 14(1), GDPR*). In the trusts and estates context the third party will be the settlor or testator who has provided information to be included in the will or trust deed or in a letter of wishes. The following additional information must also be notified:

- The categories of personal data concerned. Information provided by settlors and testators is likely to be in the following categories:
 - identity data such as full names, marital status, title, date of birth and gender; and
 - contact data such as address, email address and telephone numbers.
- The source of the personal data and, if applicable, whether it came from publicly accessible sources such as birth registers.

We will process personal information about you from the following sources:

- You.
- [[NAME OF SETTLOR] OR [NAME OF TESTATOR]] from whom we have collected the following categories of data: [SPECIFY].
- [[NAME] bankruptcy search provider, from which we collect the following categories of data: [SPECIFY].]
- [[NAME] credit reference agency, from which we collect the following categories of data: [SPECIFY].]
- The following data from third parties is from a publicly accessible source: [SPECIFY].

HOW WE WILL USE INFORMATION ABOUT YOU

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Lawful basis for processing

The GDPR requires a data controller to justify the processing of personal data before it will be considered lawful under Article 5(1)(a). Trustees and PRs are most likely to rely on legal obligation as the justification for processing the data. For more information, see *Practice note, GDPR: implications for trustees and personal representatives: Which legal grounds can trustees and PRs use?*

[

We will use the personal information to:

- [Communicate with you.]
- [Assess your beneficial entitlement.]
- [Carry out bankruptcy searches before making distributions to you.]
- [Comply with legal or regulatory requirements.]
- [[INSERT OTHER USES PARTICULAR TO THE TRUST OR ESTATE].]

HOW WE USE SENSITIVE PERSONAL INFORMATION

SENSITIVE INFORMATION (OPTIONAL)

Subject to certain exceptions, the GDPR prohibits the processing of “special categories of personal data”, unless there are certain justifications. This is personal data that reveals:

- Racial or ethnic origin.
- Political opinions.
- Religious and philosophical beliefs.
- Trade union membership.
- Genetic data.
- Biometric data.
- Health data.
- Sex life and sexual orientation.

(Article 9(1), GDPR.)

For further information on the justifications for processing special categories of personal data, see [Practice note, GDPR: implications for trustees and personal representatives: Special category data](#).

We may also collect, store and use sensitive personal information to help us comply with the wishes of [[NAME OF SETTLOR] **OR** [NAME OF DECEASED TESTATOR]] and to enable us to identify and protect your rights as a beneficiary. [SPECIFY OTHER].]

]

DATA SHARING

DATA SHARING

Where trustees or personal representatives enter into a contract (or other legally binding act) with any third-party processor (such as a solicitor, accountant, genealogical search agent or bankruptcy search processor) the GDPR imposes obligations on the processor to:

- Process the personal data only on the documented instructions of the data controller.
- Only use staff and other persons who have a duty of confidentiality with regard to the data.
- Comply with security obligations equivalent to those imposed on the controller under the GDPR.
- Notify the controller of any breach in relation to the personal data shared by the controller.
- Enlist a sub-processor only with the prior permission of the controller.

(Article 28, GDPR.)

Why might you share my personal information with third parties?

We will only share your personal information with the following third parties for the purposes of administering the [trust **OR** estate]:

- [NAME OF FIRM OF] [SOLICITORS ACTING FOR THE TRUST OR ESTATE]
- [NAME OF FIRM OF] [ACCOUNTANTS ACTING FOR THE TRUST OR ESTATE]

- [NAME OF] [BANKRUPTCY SEARCH COMPANY]
- [MONEY LAUNDERING VERIFICATION COMPANY]
- [BENEFICIARY TRACING AGENCY]
- [ACTUARY]
- [INSURANCE COMPANY]
- [OTHER RELEVANT THIRD PARTIES WHETHER BY NAME OR CATEGORY OF THIRD PARTY]

All third-party service providers are required to take appropriate security measures to protect your personal information in line with our policies. We do not allow our third-party service providers to use your personal data for their own purposes. We only permit them to process your personal data for specified purposes and in accordance with our instructions.

TRANSFERS OF PERSONAL DATA OUTSIDE THE EEA

The GDPR imposes cross-border transfer restrictions on transfers of personal data out of the **European Economic Area** (EEA) (known as a third country under the GDPR).

The GDPR only allows transfers of personal data outside of the EEA based on one or more of the following:

Transfers outside the EEA may rarely be relevant for trustees and PRs but could apply where administration requires distribution to overseas beneficiaries or there are assets outside the EEA and they need to engage local representatives. An example might be where a copy of a will which includes the names and addresses of beneficiaries is to be sent to a probate registry in a third country to obtain probate in relation to assets held there.

For more background information on transfers outside the EEA, see [Practice note, Cross-border transfers of personal data under the GDPR](#).

TRANSFERS OF PERSONAL DATA OUTSIDE THE EEA

Will my data be transferred abroad?

We will only transfer personal data outside the EEA if one of the following applies:

- The European Commission has issued a decision confirming that the country to which we transfer the personal data ensures an adequate level of protection for the data subjects' rights and freedoms.
- Appropriate safeguards are in place such as binding corporate rules, standard contractual clauses approved by the European Commission, an approved code of conduct or a certification mechanism.
- You have provided explicit consent to the proposed transfer after being informed of any potential risks.
- The transfer is necessary for one of the other reasons set out in the GDPR including the performance of a contract between us, reasons of public interest, to establish, exercise or defend legal claims or to protect your vital interests where you are physically or legally incapable of giving consent and, in some limited cases, for our legitimate interest.

DATA SECURITY

DATA SECURITY

Trustees and PRs should:

- Implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected (*Article 32(1), GDPR*).
- Ensure that anyone acting under their authority who has access to the personal data does not process it except on their instructions, unless required to do so by EU or member state law (*Article 32(4)*).

Security measures

Measures that may be taken include or display the following features and functionalities:

- The pseudonymisation and encryption of personal data.
- The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.
- The ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident.
- A process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

(*Article 32(1)*.)

For further information on security measures under the GDPR, see [Practice note, Overview of EU General Data Protection Regulation](#).

We have put in place appropriate security measures to prevent your personal information from being accidentally lost, used or accessed in an unauthorised way, altered or disclosed. In addition, we limit access to your personal information to those agents, contractors and other third parties who need it to assist in administering the [trust **OR** estate]. They will only process your personal information on our instructions and they are subject to a duty of confidentiality.

We have put in place procedures to deal with any suspected data security breach and will notify you and any applicable regulator of a suspected breach where we are legally required to do so.

DATA RETENTION

DATA RETENTION

The GDPR does not specify retention periods for personal data. Instead, trustees and PRs are required not to retain personal data in a form that enables data subjects to be identified for longer than is necessary to fulfil the purposes for which the data was collected (*Article 5(1)(e), GDPR*).

Trustees and PRs must provide beneficiaries with information about the period for which the data will be stored (as part of the transparency principle). If this is not available, the criteria used to determine that period should be provided. The stated criteria could be that trustees and PRs must retain the data for as long as necessary to fulfil the legal obligations owed to the beneficiary (for example, for the duration of the trust period, for the duration of the administration of the estate or will trust, or for the limitation period for the bringing of legal claims for breach of trust) (*Article 13(2)*).

If a professional adviser acting for the trustee or PR has a document retention policy in relation to wills and trusts, it may be appropriate to link to this from the privacy notice. For guidance on document retention policies, see [Law Society: Practice note, File retention: wills and probate](#).

How long will you use my information for?

We will retain your personal information [for a period of [[PERIOD] **OR** [RELEVANT PERIOD IN LINE WITH PROFESSIONAL ADVISERS' DOCUMENT RETENTION POLICY FOR WILLS AND TRUSTS]] **OR** for as long as necessary to fulfil our legal obligations in relation to the [trust **OR** estate]]. We retain your personal information for that period so that we can show, in the event of a legal claim, that we have administered the [trust **OR** estate] correctly. After this period, we will securely destroy your personal information in accordance with [our data retention policy **OR** applicable laws and regulations].

RIGHTS OF ACCESS, CORRECTION, ERASURE, AND RESTRICTION

RIGHTS OF ACCESS, RECTIFICATION, ERASURE, AND RESTRICTION

Data subject access requests (DSARs)

Under the GDPR, beneficiaries have the right to obtain confirmation from trustees and PRs as to whether or not they process personal data relating to them. If the trustee or PR does process the individual's personal data, they must provide them with access to the data, including providing a copy of the personal information (unless providing a copy adversely affects the rights and freedoms of others) (*Article 15, GDPR*).

Trustees must provide a copy of the personal data to the beneficiary free of charge but may charge a reasonable fee for additional copies (*Article 15(3)*).

If a beneficiary's requests are unfounded or excessive, trustees or PRs may either:

- Charge a reasonable fee to provide the information or take the requested action.
- Refuse to act on the request.

(*Article 12(5)*.)

Your rights in connection with personal information

Under certain circumstances, by law you have the right to:

- **Request access** to your personal information (commonly known as a "data subject access request"). This enables you to receive a copy of the personal information we hold about you and to check that we are lawfully processing it.
- **Request correction** of the personal information that we hold about you. This enables you to have any incomplete or inaccurate information we hold about you corrected.
- **Request erasure** of your personal information. This enables you to ask us to delete or remove personal information where there is no good reason for us continuing to process it. You also have the right to ask us to delete or remove your personal information where you have exercised your right to object to processing (see below).
- **Object to processing** of your personal information where we are relying on a legitimate interest (or those of a third party) and there is something about your particular situation which makes you want to object to processing on this ground. You also have the right to object where we are processing your personal information for direct marketing purposes.
- **Request the restriction of processing** of your personal information. This enables you to ask us to suspend the processing of personal information about you, for example if you want us to establish its accuracy or the reason for processing it.

If you want to review, verify, correct or request erasure of your personal information, or object to the processing of your personal data, please contact [NOMINATED TRUSTEE OR PERSONAL REPRESENTATIVE] in writing using any of the following methods [INSERT CONTACT DETAILS].

ACKNOWLEDGMENT OF RECEIPT

The GDPR does not require beneficiaries to sign an acknowledgment of receipt. However, as best practice, trustees and PRs may want to ask for a receipt to demonstrate that beneficiaries have been properly informed of their data collection and handling practices, including any data subject rights.

I, _____ acknowledge that on _____ (date), I received a Privacy Notice for
[[NAME OF TRUST] OR [NAME OF DECEASED]'s estate] and that I have read and understood it.

Signature

.....

Name

.....