

Policy Name	Data Protection Policy
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Officer Responsible	Chief Executive
Application	LHA Property Services
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1.0 INTRODUCTION AND GENERAL INFORMATION

- 1.1 The Data Protection Legislation (comprising of the Data Protection Act 2018 and the GDPR) is recognised by many service providers as important in protecting the rights of individuals in respect of any personal data that is kept about them, whether on a computer or in a filing system. As a subsidiary of Lochaber Housing Association, LHAPS endorses the principles outlined in the Data Protection Legislation, and this procedure outlines our approach in this regard.
- 1.2 Lochaber Housing Association Property Services (LHAPS) takes all reasonable steps to ensure that our practices in the handling of personal data are of a high standard and comply with the Data Protection Legislation. This includes, for example, using self-assessment and internal audit to help flag up areas requiring attention.
- 1.3 This Data Protection Policy is intended for use by LHAP's staff:
- when processing any personal data, including collecting, accessing, using, sharing or amending personal data as part of their day-to-day activities;
 - when they are faced with a request from data subject that relates to their personal data, whether this be a tenant or sharing owner or factored owner telephoning to enquire about their own situation or a complaint regarding how their personal data is used by LHAPS; or
 - when they require guidance on what personal data should be retained (and for how long) once it is no longer relevant to LHAPS carrying out its day-to-day business.
- 1.4 In drafting this Policy, LHAPS has tried to cover the vast majority of ways in which personal data is likely to be requested or retained. Exceptionally, however, the procedure may be silent on how to deal with a query that is made. In such circumstances, the Data Protection Officer will decide on whether the disclosure is to be made/information to be retained – with appropriate legal advice in cases where this is considered advisable.
- 1.5 The following is a glossary of key terms in the Data Protection Legislation:
- Information Commissioner's Office (the ICO) – the ICO is the body responsible for enforcing and monitoring compliance with the Data Protection Legislation in the UK;
 - controller – the organisation that determines the purposes for which and manner in which personal data is used, in our case, LHAPS;

- data subject – this refers to any living individual who the personal data relates to. Examples of data subjects that LHAPS holds personal data for are: tenants, whether former, current or prospective, board members, staff, owner occupiers, suppliers, contractors and individuals who interact with LHAPS;
- personal data – this is information that relates to and identifies (either directly or indirectly) an individual from information which is held by LHAPS. It also includes any expression of opinion or view about an individual or their circumstances. Examples of personal data relating to individuals includes their name, age, date of birth, contact details, marital status, housing history, financial status and allowance benefits and grants claimed;
- special category personal data is defined as personal data revealing an individual's: racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health, sex life or sexual orientation, and genetic or biometric data where processed for the purpose of uniquely identifying an individual;
- processing – any operation performed on personal data, including obtaining, recording, storing, using, disclosing and deleting; and
- processor – the organisation that processes personal information on behalf of the controller.

1.6 In this Policy, "GDPR" means the retained EU law version of the General Data Protection Regulation (EU) 2016/679) (EU GDPR) as it forms part of the law of Scotland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time).

2.0 DATA PROTECTION PRINCIPLES

2.1 LHAPS will operate in accordance with the principles outlined in the Data Protection Legislation. Personal information held by LHAPS will therefore be:

- obtained and processed lawfully, fairly and in a transparent manner;
- obtained only for specified, explicit and legitimate purposes, and will not be used for any other purpose;
- adequate, relevant and limited to what is necessary in relation to the purpose for which it is obtained or kept
- accurate and, where necessary, kept up to date;
- kept in a form which permits identification of individuals for no longer than is necessary for the purpose;
- handled in a manner ensuring appropriate security including protection against unlawful processing or accidental loss, destruction or damage;
- care is taken when emailing information in that the correct recipient is selected from the address book;

- (viii) care should be exercised within the content of the email to ensure that no data is forwarded that would breach data protection legislation.

The Data Protection Legislation also includes a principle of 'accountability', which requires the organisation to take responsibility for its data processing and to be able to demonstrate compliance with the above data protection principles.

3.0 RESPONSIBILITIES FOR COMPLIANCE

- 3.1 The Data Protection Officer has overall responsibility for data protection within LHAPS, and for ensuring that our entry in the ICO's Register, is accurate and up to date. This will be checked annually upon renewal.
- 3.2 The Data Protection Officer will also assist in implementing the requirements of the Data Protection Legislation by:-
- providing advice and support to all departments on all matters relating to compliance with the Data Protection Legislation
 - disseminating information relating to the Data Protection Legislation
 - responding to requests from data subjects in relation to the personal information that LHAPS holds about them.
- 3.3 Staff will be informed about data protection issues, and their rights in relation to their own personal data. Separate guidance relating specifically to LHAPS as an employer has been issued by EVH and this should be referred to where required.
- 3.4 All staff have a responsibility to fully comply with the requirements of the Data Protection Legislation and this Policy. When involved in collecting personal data, staff will explain how LHAPS will use the information by providing a copy of or access to LHAPS privacy notice.

4.0 DAILY USE OF THIS POLICY

Disclosure of Information

- 4.1 As a general rule of thumb, LHAPS should not disclose information about someone to a third party without providing the individual with a privacy notice that clearly explains the disclosure. A data subject must be given access to a privacy notice when LHAPS collects their personal data (or within one month of receiving personal data if not received directly from data subject).
- 4.2 Staff do, however, regularly have to disclose personal data about someone to:-
- the person themselves;
 - their legal appointee; or
 - someone acting on their behalf.
- 4.3 The critical point for staff is to ensure that, prior to disclosure, they are satisfied that the person asking for the information is being truthful about their identity (and steps have been taken to verify their identity where appropriate) and, where the

enquirer is not the service user, that LHAPS can legally disclose the data subjects personal data to them.

4.4 LHAPS will therefore adopt the “key question” approach already used by many companies in the UK. This involves the service user having to respond correctly to a unique question that they would definitely know the answer to, for example, what is your date of birth? Where the enquirer is not the service user, but a representative, must ensure that:-

- there is a signed mandate on file

AND

(a) the key questions can be answered (in the case of a friend or relative)

OR

(b) the staff member can check the telephone number and call back (in the case of another agency or professional representative)

4.5 Where there is any uncertainty, referral should be made to the Data Protection Officer.

4.6 All contractors, consultants, partners or other associates or agents of LHAPS that process personal data on behalf of LHAPS as processors must be subject to written contractual obligations regarding how they use such personal data before any personal data is disclosed. Staff should always check with LHA Corporate Services before disclosing any personal data to such contractors, consultants, partners or other associates or agents.

Basis and purposes for processing personal information

4.7 Before any personal information is processed by LHAPS for the first time, LHAPS will:

- review the purposes of the particular processing activity and select the most appropriate lawful basis under the Data Protection Legislation. The lawful bases most commonly used by LHAPS are that:
 - (a) the individual has consented – this is only appropriate where it is not a precondition of a service or another lawful basis applies and does not apply to staff personal data;
 - (b) the processing is necessary for the performance of or to take steps to enter into a contract with the individual – this will apply to our service users and staff and individuals requesting services from LHAPS;
 - (c) the processing is necessary to comply with a legal obligation – LHAPS needs to process certain personal data under law, such as staff personal data for HMRC reporting purposes and tenant personal data under the housing legislation in Scotland;
 - (d) the processing is necessary to perform a task in the public interest or official authority vested in LHAPS – this will relate to processing required for the LHAPS functions as a subsidiary of an RSL; or

- (e) the processing is necessary for LHAPS or a third party's legitimate interests – provided that the legitimate interests are not overridden by the interests of the individual and does not relate to LHAPS public functions as subsidiary of an RSL;
- where special category personal data is involved in the processing activity, identify the most appropriate special condition for processing in addition to a lawful basis above. Although there are others, the special conditions most commonly used by the LHAPS are that:
 - (a) the individual has explicitly consented – this is only appropriate where it is not a precondition of a service or another lawful basis applies and does not apply to staff personal data;
 - (b) the processing is necessary for LHAPS to perform our obligations or exercise rights under employment law – this would apply to staff personal data, for example, to maintain attendance and performance records;
 - (c) the processing is necessary for LHAPS to establish, exercise or defend legal claims; or
 - (d) the processing is necessary for substantial public interest reasons – such as LHAPS exercising our statutory functions, equality monitoring, health or social care purposes, or preventing / detecting unlawful acts;
- always ensure that LHAPS decision as to which lawful basis applies is documented, to help demonstrate compliance with the data protection principles; and
- information about the purposes, lawful basis and special condition (if applicable) of the processing can be found within the relevant privacy notice provided to individuals.

Retaining and Storing Information

- 4.8 LHAPS will only retain personal data about a data subject when this is required in order for day-to-day business to be undertaken. The Document Retention Policy provides the detail on the type of information LHAPS retains, together with details of the retention period.
- 4.9 All personal data is treated as both confidential and sensitive by LHAPS. This means that access to it will be strictly controlled and will be on a “need to know” basis – this also applies to access by LHAPS staff. “Need to know” would cover, for example, a member of staff acting on a colleague’s behalf when that person is not available.
- 4.10 Personal information is stored securely. Where this is in paper files, these are placed in lockable cabinets when not in use; computer files are password protected.
- 4.11 It is unavoidable that, from time to time, files and other information may have to be removed from LHAPS’ office, for example, to carry out a house visit. Staff are required to take the utmost care not to misplace or lose any personal data and report any losses immediately in accordance with Section 6 of this Policy.

Documentation and records

4.12 LHAPS keeps written records of processing activities, including:

- the name and details of LHAPS;
- the purposes of the processing of personal data by LHAPS;
- a description of the categories of individuals and categories of personal data processed by LHAPS;
- categories of recipients of personal data with whom LHAPS shares personal data;
- if we are required to transfer personal information outwith the EU, we will provide information regarding the safeguards that we have put in place with the recipient country to protect the personal information;
- details of how long LHAPS keeps personal data in line with the retention periods is contained within the Data Retention Schedule; and
- a description of technical and organisational security measures put in place to keep personal data secure.

5.0 DATA SUBJECTS' RIGHTS

5.1 Data subjects have the following rights in relation to their personal data held by LHAPS:

- right to be informed - data subjects have the right to be informed about how, why and on what basis that personal data is processed – LHAPS will issue and make accessible privacy notices from time to time in a concise, transparent, intelligible and easily accessible form, using clear and plain language;
- right of access – data subjects have the right to obtain confirmation that their personal data is being processed by LHAPS and to obtain access to it and certain other information, by making a Subject Access Request (SAR);
right to rectification – data subjects have the right to have personal data corrected if it is inaccurate or incomplete. The Data Protection Legislation states that personal data is inaccurate if it is incorrect or misleading as to any matter of fact;
- right to erasure – data subjects have the right to have their personal data erased in certain circumstances;
- right to object – data subjects have the right to object to the processing of their personal data where LHAPS carries out the processing for certain purposes;
- right to data portability – data subjects have the right to obtain personal data provided to the organisation by the individual for that individual's own reuse;
- rights in relation to automatic decision making – data subjects have the right to object to decisions being taken by automated means which produce legal effects concerning an individual or similarly significantly affect an individual; and

- right to restrict processing – data subjects have the right to restrict the processing of personal data in certain circumstances.

5.2 Data Subjects are permitted to view their personal data held by the organisation in either written or electronic form upon making a request to do so by making a SAR. Upon receipt of a request by a data subject, LHAPS must respond to the SAR within one month of the date of receipt of the request. LHAPS:

- must provide the data subject with an electronic or hard copy of the personal data requested, unless any exemption to the provision of that data applies by law (for example, where the information includes personal data of third parties) and include information on how the personal data provided is processed by LHAPS; or
- where LHAPS does not hold the personal data sought by the data subject, must confirm that it does not hold any of the requested personal data to the data subject as soon as practically possible, and in any event, not later than one month from the date on which the request was made.

5.3 Where staff receive a request from an individual that relates to their personal data and they are not authorised to handle such a request, staff must immediately notify the Data Protection Officer of the request. The Data Protection Legislation only gives LHAPS 30 days to respond to requests so staff should not delay in notifying the Data Protection Officer.

5.4 Data subjects can seek to exercise the above rights against the organisation in writing, by email or verbally. Such requests do not have to refer to the legislation, 'data protection' or 'personal data' and often requests may cite the incorrect legislation (for example, they may refer to 'freedom of information' where they are seeking access to their own personal data). The organisation must ensure that we recognise requests under the Data Protection Legislation so that the organisation complies with the relevant statutory obligations.

5.5 More information on data subject rights is included within the LHA Group data subject requests procedure.

6.0 PERSONAL DATA BREACHES

6.1 A data breach may take many different forms, for example:

- loss or theft of data or equipment on which personal data is stored;
- unauthorised access to or use of personal data either by a member of staff or third party;
- loss of data resulting from an equipment or systems (including hardware and software) failure;
- human error, such as accidental deletion or alteration of data;
- unforeseen circumstances, such as a fire or flood;
- deliberate attacks on IT systems, such as hacking, viruses or phishing scams;
- and

- 'blagging' offences, where information is obtained by deceiving LHAPS.

6.2 LHAPS will:

- where required, report a personal data breach to the ICO without undue delay and, where possible within 72 hours of becoming aware of it, if it is likely to result in a risk to the rights and freedoms of individuals; and
- notify the affected data subjects if a personal data breach is likely to result in a high risk to their rights and freedoms and notification is required by law.

6.3 It is important that staff report any suspected or actual personal data breach to the Data Protection Officer immediately. The Data Protection Officer will be responsible for recording and reporting personal data breaches and staff should not notify either the ICO or data subjects themselves under any circumstances.

7.0 DATA PROTECTION IMPACT ASSESSMENTS (DPIA)

7.1 These are a means of assisting LHAPS in identifying and reducing the risks that our operations have on the personal privacy of data subjects.

7.2 LHAPS shall: carry out a DPIA before undertaking a project of processing activity which poses a "high risk" to an individual's privacy. High risk can include, but is not limited to, activities using information relating to health or race, or the implementation of a new IT system for storing and accessing Personal Data and LHAPS will adapt the template produced by ICO when completing a DPIA.

7.3 In the event that the DPIA identifies a high level of risk which cannot be reduced the Data Protection Officer will be responsible for consulting with the ICO as required under the Data Protection Legislation.

8.0 ROLE OF INTERNAL AUDIT DATA PROTECTION

8.1 Failure to observe practices that help LHAPS comply with the Data Protection Legislation could expose LHAPS to a certain degree of risk. Keeping this Policy up to date and ensuring that staff are aware of its contents is one way of helping guard against any legal breaches. As an added safeguard, the internal auditors will be required to comment on data protection at least once in every three years.

9.0 BREACH OF THIS POLICY

9.1. This Policy is mandatory and therefore any employees, including others who obtain, handle, process and share personal data on behalf of LHAPS, must adhere to the rules of this Policy. Any breach of this Policy will be taken seriously and may result in disciplinary action (in the case of an employee) and / or personal criminal liability for data subjects involved in negligent or deliberate breaches. Failure by staff to comply with this Policy could amount to misconduct, which is a disciplinary matter.

9.2. A failure to comply with this Policy could also expose LHAPS to enforcement action by the ICO, which could result in monetary penalties being issued against LHAPS

and to complaints and claims for compensation from affected data subjects being made against LHAPS. There may also be negative publicity as a result of a breach that is made public.

- 9.3. LHAPS may review or amend this Policy at any time and will inform its staff of any amendments.