



APPLETREE PROPERTY  
LETTINGS LTD

## PROTECTING SPECIAL CATEGORY DATA POLICY

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## **1. INTRODUCTION**

- 1.1 Appletree Property Lettings Ltd (reg no.11806521) is a subsidiary of Appletree Property Holdings Ltd (reg no.11803942), a company controlled by New Forest District Council.
- 1.2 The purpose of this policy is to set out what special requirements Appletree Property Lettings Ltd must meet when relying on certain processing conditions as the legal basis for processing special category personal data, and we comply with those requirements while carrying out our work.
- 1.3 The policy also satisfies the requirement in the Data Protection Act 2018 ('the DPA') for a data controller to have in place an 'appropriate policy document' in these situations.

## **2. DEFINITIONS**

- 2.1. Competent authority – a body specified in schedule 7 of the DPA.
- 2.2. Law enforcement purpose – the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. This definition includes the alleged commission of criminal offences by the data subject.
- 2.3. Data Protection Legislation – the General Data Protection Regulation ('the GDPR'), the Law Enforcement Directive ('the LED'), the DPA and other applicable legislation and guidance.
- 2.4. Processing – an operation or set of operations which is performed on personal data, or on sets of personal data, such as: Roles and Responsibilities
  - a) collection, recording, organisation, structuring or storage,
  - b) adaptation or alteration,
  - c) retrieval, consultation or use,
  - d) disclosure by transmission, dissemination or otherwise making available,
  - e) alignment or combination, or
  - f) restriction, erasure or destruction
- 2.5. Special category personal data - processing of:
  - a) data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership;
  - b) genetic or biometric data, for the purpose of uniquely identifying an individual;
  - c) data concerning health; or,
  - d) data concerning an individual's sex life or sexual orientation.

## **3. SCOPE**

- 3.1. This policy applies to employees, the board of directors and third-party contractors.
- 3.2. Appletree Property Lettings Ltd's Data Protection Policy sets out what staff must do to ensure the processing of personal data complies with the data protection legislation, and which legal basis might apply to the processing of personal data. This policy applies only

to specific circumstances (i.e. processing conditions) where special category personal data is processed, and these are set out in detail herein.

3.3. This policy also applies to criminal offence data.

#### **4. AIMS**

4.1. The aims of this policy are:

- a) To ensure that all staff, processors acting on behalf of Appletree Property Lettings Ltd and third-party organisations are aware of which data protection legislation applies to the processing they are conducting;
- b) To ensure that employees, processors acting on behalf of Appletree Property Lettings and third-party organisations are aware of the principles and lawful conditions that apply under each law;
- c) To explain the safeguards Appletree Property Lettings Ltd operates to protect the rights and freedoms of data subjects when processing special category personal data; and,
- d) To identify the responsibilities of staff and third-party organisations in complying with the law that applies in each instance of processing.

#### **5. PROCESSING CRIMINAL OFFENCE DATA**

5.1. Appletree Property Lettings Ltd may need to process criminal offence data as part of the assessment of whether someone is suitable to become a tenant or whether a suitable property is available to accommodate them.

5.2. In accordance with Article 10 of the GDPR: Processed lawfully, fairly and in a transparent manner ('lawfulness, fairness, transparency').

'Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.'

5.3. Processing of criminal offence data must, therefore, meet one of the lawful basis for processing personal data as set out in Article 6 of the GDPR and explained at Section 7.2 of our Data Protection Policy and be authorised by law in the UK.

5.4. Section 10 of the DPA provides that processing of criminal offence data is authorised by law in the UK if it meets a specific condition in Schedule 1 of the DPA.

5.5. Part 3 of Schedule 1 of the DPA contains a condition at paragraph 29 which states 'this condition is met if the data subject has given consent to the processing.'

5.6. Therefore, Appletree Property Lettings Ltd will rely on the lawful basis of consent for such processing.

## **6. COMPLIANCE WITH THE DATA PROTECTION PRINCIPLES**

- 6.1. Processing of special category personal data must comply with the below principles of the GDPR:
  1. Processing must be lawful and fair, and meet one of the below conditions;
  2. Purposes of processing be specified, explicit and legitimate;
  3. Personal data be adequate, relevant and not excessive;
  4. Personal data be accurate and kept up to date;
  5. Personal data be kept for no longer than is necessary; and
  6. Personal data be processed in a secure manner.
- 6.2. First principle – fair and lawful processing
- 6.3. Processing must not take place unless the reason for processing is derived from legal powers granted to Appletree Property Lettings Ltd and it does not infringe the data protection legislation or any other law.
- 6.4. Data subjects must be told that their data is being collected, who is collecting it and what we will do with it. Appletree Property Lettings Ltd makes this information available through its privacy notice. A privacy notice must be in place and made available to the subject before any information is obtained from them. If personal information is not obtained from the subject directly a notice must be provided to them at the earliest of the below scenarios:
  - a) at the date of the first communication with them or otherwise;
  - b) if data is to be disclosed to another recipient, before the date of disclosure; or,
  - c) at the latest within one month.
- 6.5. In addition, one of the processing conditions from section 7 (below) must also be satisfied
- 6.6. Second principle – processing purpose
- 6.7. The purpose of processing special category personal data must be specified prior to collection, made explicit to the subject and legitimate. The data can be processed for a further purpose, but no processing must be carried out on it that is incompatible with the initial processing purpose.
- 6.8. For example, information collected for the purpose of arranging rental payments must not be used for the incompatible purpose of sending marketing materials.
- 6.9. Third principle – relevancy
- 6.10. The personal data collected and processed must be adequate, relevant and not excessive for the purpose it is collected. Only the minimum amount of information necessary for the purpose in question must be processed (e.g. shared, collected or requested).
- 6.11. Fourth principle – accuracy

- 6.12. The personal data must be accurate and, where necessary, kept up to date. Where compatible with the processing purpose, inaccurate data be erased or rectified as soon as it is found to be incorrect.
- 6.13. Where possible, data should be verified with the subject to ensure its accuracy.
- 6.14. Inaccurate, incomplete or out of date information must not be shared. To that end:
- personal data must be verified before being shared;
  - information regarding the accuracy, completeness and reliability of the data must be included when data is shared to enable any recipient to assess the accuracy of the data; and
  - if, after sharing, it is discovered that the personal data is inaccurate or the sharing unlawful the recipients must be informed without delay.
- 6.15. Fifth principle – retention
- 6.16. Personal data must be kept for no longer than is necessary for the purpose it was collected. A suitable retention period must, therefore, be established to guide periodic reviews of the personal data held. These retention periods are set out in Appletree Property Lettings Ltd’s Data Protection Policy.
- 6.17. Once the retention period has been exceeded the information must be deleted, unless further retention is justified in accordance with the archiving condition (see part 8.1 (j) of this policy).
- 6.18. Information must not be retained beyond the defined retention period without these reasons being specified and recorded.
- 6.19. Sixth principle – data security
- 6.20. Special Category must be protected against unauthorised or unlawful processing and against accidental loss, destruction or damage. Appletree Property Lettings Ltd’s Data Protection Policy sets out how the company complies with this principle.

## **7. INDIVIDUAL RIGHTS**

- 7.1. Data subjects have the following rights:
- to be informed of the Council’s use of their information;
  - of access to their information;
  - rectify information about them that is inaccurate;
  - to have their information erased (the ‘right to be forgotten’);
  - to restrict how we use their information;
  - to move their information to a new data controller;

- to object to how we use their information;
- not to have decisions made about them on the basis of automated decision making;
- to object to direct marketing; and,
- to complain about anything the Council does with their information.

7.2. Appletree Property Lettings Ltd's Information Rights Policy provides more information on these rights. They are generally limited in application, and only apply in specific situations. These rights can be restricted in part or whole; for example, for the prevention and detection of crime.

## **8. PROCESSING CONDITIONS FOR SPECIAL CATEGORIES DATA**

8.1. Processing of Special category personal data will be lawful only if it meets one of the conditions from Article 9 GDPR below:

- a) an individual has given explicit consent to the processing of personal data for one or more specified purposes, except where limited by law;
- b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the Council or a person under employment, social security and social protection law or a collective agreement under law;
  - Processing under this condition of the GDPR must also meet a condition from part 1 of schedule 1 of the DPA 18.
- c) processing is necessary to protect the vital interests of a person or where the person is physically or legally incapable of giving consent;
- d) processing by non-for-profit bodies for legitimate activities with appropriate safeguards;
- e) processing relates to personal data which have been made public by a person;
- f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
- g) processing is necessary for reasons of substantial public interest under law;
  - Processing under this condition of the GDPR must also meet a condition from part 2 of schedule 1 of the DPA.
- h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of law or pursuant to contract with a health professional and subject to the duty of confidentiality;
  - Processing under this condition of the GDPR must also meet a condition from part 1 of schedule 1 of the DPA.

- In addition, for processing under this point of the GDPR to be lawful the data must be processed by or under the responsibility of a professional subject to an obligation of professional secrecy. Under the DPA this includes circumstances in which processing is carried out:
  - a) by or under the responsibility of a health professional or a social work professional, or
  - b) by another person who in the circumstances owes a duty of confidentiality under an enactment or rule of law.
- i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, subject to the duty of confidentiality;
  - Processing under this condition of the GDPR must also meet a condition from part 1 of schedule 1 of the DPA.
- j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes.
  - Processing under this condition of the GDPR must also meet a condition from part 1 of schedule 1 of the DPA.

## **9. SAFEGUARDS – PROCESSING SPECIAL CATEGORY DATA**

- 9.1. Many of the processing conditions from parts 1, 2 and 3 of Schedule 1 of the DPA 18 require the data controller to have in place an ‘appropriate policy document’ in order for the condition to be met. This policy constitutes the appropriate policy document for these conditions.

## **10. FOR FURTHER INFORMATION**

Regulation (EU) 2016/679 (General Data Protection Regulation)

Data Protection Act 2018

Directive (EU) 2016/680 Law Enforcement Directive

Information Commissioner’s Office: [www.ico.org.uk](http://www.ico.org.uk)

## **11. REVIEW AND RETENTION**

### **11.1 Review**

11.1.1 This policy will be reviewed annually.

11.1.2 Changes to the supporting policies, relevant legislation or guidance may require further reviews within this period.

11.2 Retention

11.2.1 Each version of this Policy will be retained for a period of seven years from the date of approval.

Board approved	11 November 2019
Updated	

