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Guidance on the use of Legitimate Interests under the EU General Data Protection Regulation

For commercial, not-for-profit organisations, and for individuals

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About this guidance

An initiative of the Data Protection Network (www.dpnetwork.org.uk), this Guidance has been made possible by contributions from the Direct Marketing Association, ISBA and representatives of some of the largest companies and institutions in the UK.

This Guidance has been welcomed by the Information Commissioner's Office and the Data Protection Commissioner of Ireland and should be read in conjunction with official guidance from these and other European Regulators.

The information provided in this Guidance represents the views of the Data Protection Network's Legitimate Interests Working Group. It does not constitute legal advice and cannot be construed as offering comprehensive guidance to the EU General Data Protection Regulation (Regulation (EU) 2016/679) or other statutory measures referred to in the document.

Foreword

The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) aims to harmonise data protection legislation across EU member states, enhancing the privacy rights for individuals. It applies to organisations processing Personal Data which have an establishment within the EU and also those organisations which operate outside the EU but offer goods or services to, or monitor the behaviour of, individuals in the EU. The GDPR is applicable from 25 May 2018.

The GDPR sets out six lawful grounds for processing, one of which is processing under the Legitimate Interests of a Controller, including those of a Controller to which the Personal Data may be disclosed, or of a Third Party.

Under Article 6 1(f)
'processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of Personal Data, in particular where the data subject is a child.'

Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

Under Recital 47
'The legitimate interests of a controller, including those of a controller to which the Personal Data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller.'

As well as providing the right for individuals to object to the processing of Personal Data based on Legitimate Interests, the GDPR sets out strict criteria for organisations that seek to rely on Legitimate Interests. These include establishing that the processing is necessary and that a balancing test has been conducted. The GDPR does not specifically list all circumstances where Legitimate Interests might be relied upon.

Purpose
The purpose of this Guidance is to help commercial and not-for-profit organisations understand the circumstances in which Legitimate Interests may apply. This Guidance does not consider any other grounds for processing under the GDPR and is not intended for public authorities, as Article 6 restricts their ability to rely on Legitimate Interests under the GDPR.

This Guidance provides practical advice on assessing whether the processing might be considered "necessary" and meeting the crucial **Balance of Interests Condition**, whereby Controllers need to ensure their interests, or those of a Third Party, are not overridden by the interests or fundamental rights and freedoms of individuals.

This Guidance considers a wide spectrum of processing activities, both core and elective, which may be covered by Legitimate Interests. Our intention is to provide a framework that Controllers can apply to their own specific circumstances.

This Guidance underlines the importance of conducting and documenting **Legitimate Interests Assessments (LIAs)** wherever a Controller seeks to rely on Legitimate Interests, even where the balance of interests is clearly in favour of the Controller. The ICO has expressed full support for the central concept of a Legitimate Interests Assessment (LIA), and documenting this on a template. Such an assessment will certainly assist organisations in meeting their accountability and transparency requirements and ensure that individuals' interests are put front and centre under the GDPR regime.

This Guidance also aims to offer clarity for individuals on why processing under Legitimate Interests may be advantageous to them, as well as to Controllers.

In order to meet the **GDPR transparency requirements**, this Guidance offers advice on how best to articulate and inform individuals, using fair processing notices, about the circumstances in which their Personal Data may be processed under Legitimate Interests. If this Guidance is widely adopted, it will provide a consistent approach for the benefit of both organisations and individuals.

"I am delighted that the Data Protection Network and other collaborators have been able to publish this Guidance. I appreciate the work of all involved and the Information Commissioner's Office for valuable scrutiny and comment. This Guidance will be kept under review and updated as necessary."

Robert Bond, Partner and Notary Public for Bristows LLP and Chairman of the Data Protection Network

Overview

This Guidance is a practical tool to help commercial and not-for-profit organisations assess whether or not they can rely on Legitimate Interests as a Lawful Basis for processing Personal Data under the GDPR.

An essential part of the concept of Legitimate Interests is the balance between the interests of the Controller and the rights and freedoms of the individual:

> *'processing is necessary for the purposes of the legitimate interests pursued by the controller or by a Third Party,* ***except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of Personal Data****, in particular where the data subject is a child.'* [1]

It is important to note that this Guidance reflects the law as set out under the GDPR and will be subject to the finalisation of the proposed Regulation on Privacy and Electronic Communications. The final text of this proposed Regulation has yet to be published. The European Commission has said it is aiming to implement this Regulation (repealing Directive 2002/58/EC) in line with the GDPR by 25 May 2018.

[1]GDPR Article 6(1)(f)

Contents of the Guidance

Understanding what Legitimate Interests are

Key definitions 06

The Lawful Basis for processing under the GDPR 07

Individuals' rights under the GDPR & the implications of using Legitimate Interests 08

Identifying areas of processing where Legitimate Interests may apply

How Legitimate Interests might apply 09

Examples of Legitimate Interests in action 10

The Legitimate Interests Assessment (LIA) - the 3 stage test

Identifying a Legitimate Interest 14

The 'necessity test' 14

The 'balancing test' 14

Transparency and the consumer

How to communicate the use of Legitimate Interests effectively and transparently to individuals 16

Appendices:

Appendix A – Legitimate Interest Process Flow for selecting Lawful Basis for processing 19

Appendix B – Legitimate Interests Assessment Template 20

Appendix C – The GDPR articles and recitals relating to Legitimate Interests 25

Appendix D – Glossary of terms 31

Understanding what Legitimate Interests are

Key definitions

When considering Legitimate Interests as a ground for processing it is important to take note of the specific wording in Article 6 (1)(f):

> *'Processing will be lawful if it is **necessary** for the **purposes** of the **legitimate interests** pursued by the controller or a third party, except where such interests are overridden by the **interests** or fundamental **rights and freedoms** of the data subject which require protection of Personal Data, in particular where the data subject is a child.'*

In practice, Legitimate Interests can only be relied upon as a Lawful Basis of processing to the extent that such activity is **'necessary'** (for the purpose of the Controller's or a Third Party's Legitimate Interests).

Whilst evaluating whether processing is 'necessary', Controllers also need to take into account whether on balance their Legitimate Interests are outweighed by the rights and freedoms of the individual and that the processing would not cause unwarranted harm. This is called a 'balancing test'.

'Purpose' is the specific reason why the data is being processed.

An **'interest'** is the broad stake a Controller may have in the processing, or the benefit that the Controller derives, or which society might derive, from the processing. It must be real and not too vague. For example, many businesses want to make a profit. This does not mean that the broad objective is a Legitimate Interest in and of itself.

An **'interest'** can be considered as **'legitimate',** as long as the Controller can pursue this interest in a way that complies with data protection and other laws.

Article 6(1)(f) provides protection for individuals by requiring that all their relevant **'interests'** and **'rights and freedoms'** (including but not limited to their privacy rights, such as the European Convention on Human Rights) should be taken into account and weighed against the interests of the Controller.

Some interests are likely to be legitimate because they are 'strictly necessary' for corporate governance or related legal compliance issues, particularly where there is no legal obligation to comply with, but the processing is essential to ensure the Controller meets external or internal governance obligations. Other interests are legitimate because they are a routine part of the activities of the Controller but other lawful reasons for processing are not practical or are not available. Regardless of the importance of the processing activity to the Controller, an assessment must be made to ensure the processing meets the threshold required to rely on Legitimate Interests as a Lawful Basis.

Although this is not a term used in the GDPR, this Guidance uses the term Legitimate Interests Assessment or LIA to mean:

1. The assessment of whether a Legitimate Interest exists;
2. The establishment of the necessity of processing; and
3. The performance of a balancing test to decide if a particular processing operation can rely on the Legitimate Interests provision in the GDPR as a Lawful Basis for processing that Personal Data

This is the same principle found in the ICO and Article 29 Working Party guidance and opinions.

(Also see Glossary of Terms – Appendix D)

The Lawful Basis for processing under the GDPR

Controllers must have a Lawful Basis for processing Personal Data, under the GDPR and these are set out in Article 6.1 as follows:

a) **CONSENT** – the individual has given their Consent to the processing of their Personal Data.

b) **CONTRACTUAL** - processing of Personal Data is necessary for the performance of a contract to which the individual is a party or for the Controller to take pre-contractual steps at the request of the individual.

c) **LEGAL OBLIGATION** - processing of Personal Data is necessary for compliance with a legal obligation to which the Controller is subject.

d) **VITAL INTERERSTS**- processing of Personal Data is necessary to protect the vital interest of the individual or of another individual.

e) **PUBLIC TASK** - processing of Personal Data is necessary for the performance of a task carried out in the public interest or in the exercise of official authority.

f) **LEGITIMATE INTERESTS** – processing is necessary under the Legitimate Interests of the Controller or Third Party, unless these interests are overridden by the individual's interests or fundamental rights.

Is consent the most important Lawful Basis for processing?
It is important to note that there is no hierarchy of Lawful Bases for processing Personal Data: all are equally valid. Controllers may choose a different Lawful Basis for different processing activities. The most appropriate Lawful Basis will depend on the Personal Data being processed and the purposes for processing.

Legitimate Interests may be considered where:

- another Lawful Basis is not available due to the nature and/or scope of the proposed processing; or
- where there are a number of Lawful Bases that could be used but Legitimate Interests is the most appropriate

Telling Individuals about the Lawful Basis of Processing
Under the GDPR, Controllers must be clear and transparent about which Lawful Basis they are using as;

i) different Lawful Bases give rise to different obligations under the GDPR;

and

ii) Controllers should record which Lawful Basis they are choosing for their different processing activities and their reasons for choosing that Lawful Basis

It is also important to note that, in addition to satisfying one of the Lawful Bases for processing Personal Data, Controllers must comply with the data protection principles[2] in the GDPR Under the transparency provisions in the GDPR, Controllers must set out what their Legitimate Interests are when they rely on this as their Lawful Basis for processing.

Processing for secondary purposes – Recital 50 & Article 6(4)
If the purpose of the processing changes the Controller would need to evaluate and document whether the new purpose is compatible, taking into account;

(a) any link between the original purpose and the intended future processing

(b) the context in which the Personal Data was collected; specifically, the relationship between the Controller and the individual

(c) the nature of the Personal Data

(d) the possible consequences of the change of purpose on individuals

(e) the existence of appropriate safeguards, e.g. encryption or pseudonymisation

[2] GDPR Article 5 'Principles relating to processing of Personal Data'

Individuals' rights under the GDPR and the implications of using Legitimate Interests

When considering which Lawful Basis is most appropriate to rely on for the processing of Personal Data, Controllers should take into consideration the privacy rights of individuals under each Lawful Basis of processing. It is important to note these rights may differ depending on which Lawful Basis a Controller may choose to rely.

Example – Consent Vs Legitimate Interests
Different rules apply depending on whether the Controller is relying on Legitimate Interests or another basis for processing, such as Consent.

For example, if a Controller relies on Legitimate Interests for its profiling activities the individual has a right to object to profiling under Article 21. However, if the Controller uses Consent for its profiling activities the individual does not have this right (although they can withdraw their Consent at any time).

Therefore, on balance, a Controller may wish to rely on its Legitimate Interests, as it has the opportunity to defend this decision, whereas when Consent is withdrawn, the processing must cease immediately.

As always, the Controller would be advised to check that it is able to rely on Legitimate Interests by conducting a Legitimate Interests Assessment (LIA).

Overall the GDPR provides the following rights for individuals, many of which apply whatever the basis of processing, although there are some exceptions:

1. The right to be informed how Personal Data is processed
2. The right of access to their Personal Data
3. The right to rectification
4. The right to erasure
5. The right to restrict processing
6. The right to data portability
7. The right to object
8. Rights in relation to automated decision making and profiling

Legitimate Interests and the obligation to inform individuals
Controllers need to be aware that if they use Legitimate Interests rather than other Lawful Bases, individuals must be told about those Legitimate Interests and there is also an obligation to tell individuals about their right to object.

Right to erasure and Legitimate Interests
The 'right to erasure' is not an automatic right for individuals where processing is based on Legitimate Interests. However, this would be the case if Consent was the Lawful Basis[3]. That said, even where the Controller relies on Legitimate Interests for the processing, an individual will still have the right to object to the processing of their Personal Data[4] . The right to erasure would then apply if the Controller could not justify the legitimacy of the processing. Additionally, the right still applies when relying on Legitimate Interests where the Personal Data is no longer required for the purpose it was originally collected, or where the processing is found to be unlawful.

Legitimate Interests and the right to object
When processing is based on Legitimate Interests, the Controller must inform individuals of their right to object to such processing. This can be highlighted to an individual at the point of data collection (when explaining what Legitimate Interests means) and in the section of a Privacy Notice that deals with individuals' rights.

In some cases, such as direct marketing, an objection from an individual will be sufficient to mean the Controller's Legitimate Interests are overridden. In this situation the Controller must uphold the individual's right to object and exclude them from such processing. However in other cases, such as fraud prevention or network and information systems security, an objection may not be enough be sufficient to override the Controllers Legitimate Interests.

Controllers will also need to consider what tools will be required to allow individuals to object. These are likely to vary depending on the processing conducted. For example, an objection to processing for direct marketing may be able to be requested and actioned automatically by the individual (through an unsubscribe link or online preference centre), whereas an objection to other forms of processing may need to be further considered and actioned by the Controller. Controllers should consider the impact of any individual's objection when conducting the balancing exercise to identify how an objection will be handled in advance.

Right of data portability and Legitimate Interests
The right of data portability does not extend to Personal Data processed on the basis of Legitimate Interests. However, you should refer to official guidance regarding the scope of the right to portability, particularly in relation to "observed" data."

[3]GDPR Recital 68 [4]GDPR Article 21

Identifying areas of processing where Legitimate Interests may apply

How Legitimate Interests might apply

3 Stage Test
A Controller may rely upon its Legitimate Interests subject to identifying a Legitimate Interest, establishing that the processing is 'necessary' and conducting a balancing test. The Legitimate Interest can be one of the Controller or of a Third Party to whom the data may be disclosed, as long as the 3 stage test is passed.

Direct vs Indirect Relationships
The context of the relationship between the individual and a Controller is a key element in understanding the legitimacy of the processing activity. It does not necessarily matter if there is a direct or indirect relationship between the individual and the Controller to have a Legitimate Interest, but it will be a factor to consider in a balancing test. The nature of the relationship should be weighed against the necessity of the processing and the impact on the individual.

Disclosure to Third Parties
A direct relationship with the individual is not essential for relying on Legitimate Interests although the requirement to inform individuals that you have obtained their data from a Third Party[5] would have to be taken into consideration.

Recitals 47 to 50 in the GDPR give some examples of when a Controller may have a Legitimate Interest which would need to be confirmed by an LIA:

1) DIRECT MARKETING - processing for direct marketing purposes under Legitimate Interests is specifically mentioned in the last sentence of Recital 47.

2) REASONABLE EXPECTATIONS - the fact that individuals have a reasonable expectation that the Controller will process their Personal Data, will help the make the case for Legitimate Interests to apply when conducting the balancing test.

3) RELEVANT & APPROPRIATE RELATIONSHIP - where there is a relevant and appropriate relationship between the individual and the Controller in situations where the individual is a client or in the service of the organisation. However, this does not mean that there will always be a Legitimate Interest in processing an individual's data. Legitimate Interests is more likely to apply when there is a direct 'appropriate' relationship with individuals because the processing is less likely to be unexpected or unwanted, so the balancing test will be easier. Recital 47 indicates that it is more difficult to use Legitimate Interests when there is no pre-existing relevant relationship (although this is not ruled out).

4) STRICTLY NECESSARY FOR FRAUD PREVENTION - where the processing is strictly necessary for the purpose of preventing fraud. This could include verifying that the registered address of the cardholder for a particular credit or debit card is the same as the cardholder's normal place of residence or work.

5) ORGANISATIONAL - where Controllers are part of an organisational group or institutions affiliated to a central body that transmit Personal Data within that organisational group or to the central body. However, the rules on transferring Personal Data to a country outside the European Economic Area (EEA) must be complied with if this is relevant.

6) NETWORK & INFORMATION SECURITY - where the processing of Personal Data is strictly necessary and proportionate for the purposes of ensuring network and information security. An example of this would include monitoring authorised users' access to a Controller's computer network for the purpose of preventing cyber-attacks.

Article 6 of the GDPR restricts the ability of Public Authorities to rely on Legitimate Interests.

[5]GDPR Article 14

Examples of Legitimate Interests in action

There will undoubtedly be a wide range of processing activities for which a Controller may wish to consider using Legitimate Interests as the Lawful Basis for processing Personal Data, subject to an LIA. This may be processing that is clearly for the individual's benefit, for the mutual benefit of both the individual and the Controller (and Third Party) for organisational activities, or where the Controller has a compelling interest in the processing and/or when there is a limited privacy impact on the individual.

Depending on the processing activity in question, the balancing test used to assess Legitimate Interests may be very straight-forward or more complex. In the case of the latter, documenting how the decision to rely on Legitimate Interests was reached will be crucial. (See Legitimate Interests Assessments)

PLEASE NOTE: The broad non-exhaustive list of examples provided below are intended to give an illustration of scenarios in which Controllers may consider the use of Legitimate Interests as the basis for the processing of Personal Data. All of these examples would be subject to the Controller conducting an LIA to evaluate their own specific circumstances.

Example 1 - FRAUD
An insurance company wants to process Personal Data as part of its business critical anti-fraud measures. This is clearly in the interests of the Controller but could also be seen as benefiting customers as the cost of fraud is one of the factors that can push up insurance premiums for all.

Example 2 – RISK ASSESSMENT
Insurance companies need to "risk assess" potential customers to determine what products / services they can offer and the terms of those services. They also need claims information to prevent and detect fraud. They have competition law requirements that limit industry data sharing. Therefore, providers of information services to the insurance industry have set up contributory databases, allowing insurers to contribute data on their own customers and benefit from information on potential new customers held by their competitors. Such an industry database also allows insurers to gather relevant information from across the industry to assess and resolve claims more efficiently, and to prevent and detect fraud.

Example 3 – DUE DILIGENCE
In addition to carrying out statutory requirements, companies may wish to conduct further and necessary corporate due diligence on customers, potential customers and business partners. Providers of diligence information are able to assist companies with their obligations by making it quick and easy to obtain all their information in one place. This could include, for example, consolidating all the official watch-lists, sanction lists and 'do-not-do-business-with' lists published by governments and other official bodies globally. As well as providing keyword searches of industry and reputable publications to determine if companies and individuals have been involved in or convicted of relevant offences, such as fraud, bribery and corruption.

Example 4 – ETHICAL
A refugee charity, for ethical and humanitarian purposes processes Personal Data of individuals located in the EU, for the assessment and allocation of resources. This is in the interests of both the refugee and the charity.

Example 5 – INDIVIDUAL RIGHTS
A business needs to continue processing Personal Data on an individual who has exercised their right to erasure. They will need to keep basic data to identify that individual and retain it solely for suppression purposes to prevent further unwanted processing. This activity would be in the mutual interests of the individual who wishes their privacy rights to be upheld and the business which is required to fulfil this right.

Example 6 – NETWORK SECURITY
As specified in its IT governance policies, a mail order company monitors access to accounts containing Personal Data by named users within the organisation to prevent theft of data by employees. The mail order company regards this as essential processing activity to protect its customers.

Example 7 – SUPPRESSION
A publishing company needs to hold Personal Data about an individual on a suppression file to ensure there is a record of their objection to direct marketing. The company will hold a minimised amount of Personal Data in order to uphold this request. Alternatively, the company could rely on Article 6(1)(c) – necessary for compliance with legal obligation, which would mean that an LIA would not be required.

Example 8 – CHILDREN'S AGE
A computer games company will need to obtain parental or guardian Consent to process Personal Data of a child below the age of 16 (or such lower age as law stipulates) but may need to process the Personal Data of the child on an ongoing basis in order to ensure that the rights of the child are observed and continue to be observed when the child becomes an adult in the eyes of the law. In addition, the same will apply where the child is below the age of 13 years. It may be a legitimate interest to process such Personal Data.

Example 9 - PERSONALISATION
A travel company relies on Consent for its marketing communications, but may rely on legitimate interests to justify analytics to inform its marketing strategy and to enable it to enhance and personalise the "consumer experience" it offers its customers.

Example 10 – PROFILING
In carrying out its risk modelling an insurance company captures and uses a range of Personal Data in order to assess factors affecting those risks, for example age, location and claims history.

Example 11 – EVIDENTIAL PURPOSES
A hotel logs customer entries and exits to their hotel rooms, as well as employee access to the customers' rooms by using key card data. This information is used to manage disputes with guests, any investigations into staff misconduct and separately to administer guest stays and improve customer experience. The data is limited and normally only retained for 31 days, then deleted.

Example 12 – EMPLOYEE RELATIONS
A financial services company processes an employee's contact details in order to arrange business travel, and ensure the employee receives benefits and training.

Example 13 – HUMAN RESOURCES RECORDS
A distribution company processes the Personal Data of its employees in order to provide optional staff benefits e.g. health plan and gym membership.

Example 14 – DIRECT MARKETING
A charity sends a postal mailshot out to existing supporters providing an update on its activities and details of upcoming events.

Note: The GDPR says, 'the processing of Personal Data for direct marketing purposes may be regarded as carried out for a legitimate interest.' An organisation may wish to rely upon Legitimate Interests where Consent is not viable or not preferred and the Balance of Interests condition can be met. The GDPR states "may be regarded as…", so organisations will still need to ensure they can establish necessity and balance their interests with the interests of those receiving the direct marketing communications.

Example 15 - MONITORING
A retail company requests its call centre operators to use a software solution which uses big data to identify recurring problems and analyse the patterns of behaviour of customers and staff. This solution includes capturing and processing the calls and is used to enable the call centre to ensure optimum staff performance and to serve customers better. A notification is included on the IVR message at the beginning of all calls.

Example 16 – ARTIFICIAL INTELLIGENCE
A customer service department, is putting in place algorithms that help to manage customer service requests. The system would use artificial intelligence methods to route customer contacts to the most appropriate part of the organisation. These routes could link individuals to specific agents who can handle specific requests, but in addition the algorithm might ask a series of questions and provide appropriate answers without the need for human intervention.

Example 17 – WEB ANALYTICS
A social media platform uses diagnostic analytics to assess the number of visitors, posts, page views, reviews and followers in order to optimise future marketing campaigns.

Example 18 – HOSTING DATA IN THE CLOUD
An airline adopts cloud-based services for hosting the data of EEA citizens. This will include where cloud based data services are used to archive data from the live processing environment.

Example 19 – LIMITED INTERNATIONAL TRANSFERS
A charity transfers the personal details of refugees in the EU to a third country which has a programme of refugee settlement.

Note: International transfers which can be qualified as not repetitive and that only concern a limited number of data subjects, are recognised as possible for the purposes of the compelling Legitimate Interests pursued by a Controller (when those interests are not overridden by the interests or rights and freedoms of the data subject and when the Controller has assessed all the circumstances surrounding the data transfer).

Example 20 – PERSONAL DATA TRANSFERRED IN AN ACQUISITION
A publisher acquires circulation data, in the course of a business acquisition, of several magazine titles and wishes to use the data for similar purposes to those for which it was originally acquired.

Example 21 – POSTAL MARKETING FROM THIRD PARTIES
A catalogue company adds details to its online order forms which indicate that it shares data with other cataloguers. The purchaser can opt-out of this sharing and the cataloguers are listed in the Privacy Statement.

Example 22 – UPDATING CUSTOMER DETAILS AND PREFERENCES
A retail company uses an external service provider to verify the accuracy of customer data and create a better understanding of its customers. The company would need to carefully consider how it was conducting this and what the reasonable expectations of its customers would be.

Example 23 – LOGISTICS
A supermarket chain needs to establish where best to locate its distribution points and how to allocate products within warehouses. The business needs to process customer data in order to predict future demand. Additional data is externally sourced to enrich the customer records and inform these decisions.

Example 24 - ROAD TRAFFIC DATA
Real-time road traffic data is collected for modern traffic routing services, in both the private and public sectors, allowing greatly improved efficiency in the management of traffic in densely populated areas. It enables car navigation systems and is used by individuals, the public sector, and commercial fleets. The data used for this is emitted by mobile phones, connected cars and other end-user devices.

Example 25 – SEASONAL HEALTH TRENDS
Personal Data is processed for scientific statistical research purposes. A minimal amount of data relating to when individuals searched the internet about flu is aggregated to produce outputs that can be highly useful to public authorities and beneficial to society at large, helping to try and understand the spread of diseases like flu.

The Legitimate Interests Assessment (LIA) – the "3-stage test"

An essential part of the concept of Legitimate Interests is the balance between the interests of the Controller and the rights and freedoms of the individual:

> *'processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party,* ***except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data****, in particular where the data subject is a child.'* [6]

If a Controller wishes to rely on Legitimate Interests for processing Personal Data it must carry out an appropriate assessment, which we have called a Legitimate Interests Assessment, or LIA. When carrying out an assessment, the Controller must balance its right to process the Personal Data against the individuals' data protection rights.

In certain circumstances, an LIA may be straightforward. However, it is advisable for the Controller, in order to ensure compliance with Article 5(2) of the GDPR, to maintain a written record that it has carried out an LIA and the reasons why it came to the conclusion that it met the balancing test elements. These LIAs may be disclosed to other Controllers in the event of a sale or acquisition of Personal Data, where Legitimate Interests is the Lawful Basis of processing, as part of the due diligence process. **The Controller to whom Personal Data is disclosed will need to review the LIAs and update them where processing activities will differ.** Additional requirements set out in the GDPR may also need to be met, such as notification of changes to processing.

By conducting an LIA, the Controller can ensure that the privacy rights of individuals are given due consideration. While the Legitimate Interests of the Controller will often be aligned with the interests of the individual (e.g. to ensure individuals receive an optimised service from the Controller they are engaged with) sometimes those interests will not be aligned. The Controller must consider if the individual's rights override the Controller's interests and if any potential harm that may occur as a result of the processing.

Requirement to carry out an LIA – Balancing Interests against the rights of individuals
Where a Controller wishes to rely on Legitimate Interests as the Lawful Basis for a processing operation, it will need to be able to demonstrate to a Supervisory Authority and/or an individual, when challenged, that it has fully considered the necessity of the purpose of processing against the rights of the individuals and came to a decision that the individual's rights did not override the interest of the Controller. The decision should be documented and reviewed if the scope of the processing operation changes.

The **LIA template in Appendix B** has been specifically developed to help Controllers carry out this balancing test and document their decisions. However, it can be adapted to suit the sector and industry of the Controller.

Who should carry out an LIA?
The Controller should determine who completes an LIA, who contributes to the evaluation process and who signs it off. Where it is practical to do so, the Controller may wish to create a separation of responsibilities, between the person who signs-off the LIA and those who stand to benefit from the processing. In short, any conflict of interests should be avoided in order to ensure a fair balancing test is conducted.

Ideally, a data protection subject matter expert should carry out an LIA. However, where this is not possible, an individual with appropriate seniority should be given responsibility to ensure that there is adequate consideration and accountability for the decision-making process.

[6] GDPR Article 6(1)(f)

The 3 key stages of an LIA are:

1. **Identify a Legitimate Interest**
2. **Carry out a Necessity Test**
3. **Carry out a Balancing Test**

The LIA Template (Appendix B) sets out the key elements of these stages but here are some key considerations at each step:

1. Identify a Legitimate Interest

- The first stage is to identify a Legitimate Interest – what is the purpose for processing the Personal Data and why is it important to you as a Controller? A Legitimate Interest may be elective or business critical; however, even if the Controller's interest in processing Personal Data for a specific purpose is obvious and legitimate, based on the objectives of the Controller, it must be a clearly articulated and communicated to the individual.

- Legitimate Interests can be those of the Controller or a Third Party to whom the Personal Data may be disclosed. It is possible that a number of parties may have a Legitimate Interest in processing the Personal Data. While you may only need to identify one Legitimate Interest, all relevant interests should be considered. Your LIA would only cover your relevant processing and the disclosure of the personal data. A Third Party would have to conduct their own LIA for their own processing purposes.

2. Carry out a Necessity Test

Controllers should consider whether the processing of Personal Data is "necessary" for the pursuit of its commercial or business objectives. The adjective "necessary" is not synonymous with "indispensable" but neither is it as wide as "ordinary", "useful", "reasonable" or "desirable". It may be easiest to simply ask, "Is there another way of achieving the identified interest?"

- If there isn't, then clearly the processing is necessary; or
- If there is another way but it would require disproportionate effort, then you may determine that the processing is still necessary; or
- If there are multiple ways of achieving the objective, then a Data Protection Impact Assessment (DPIA) should be used to identify the the least intrusive processing activity; or
- If the processing is not necessary then Legitimate Interests cannot be relied on as a Lawful Basis for that processing activity.

3. Carry out a Balancing Test

A Controller can only rely on a genuine Legitimate Interest where the rights and freedoms of the individual whose Personal Data will be processed have been evaluated, and these interests do not **override** the Controllers' Legitimate Interest.

- **The balancing test must always be conducted fairly.** The Controller should not attempt to make the assessment unfair or biased, and must always give due regard and weighting to the rights and freedoms of individuals.

- There are several factors to consider when making a decision regarding whether an individual's rights would override a Controller's Legitimate Interest. These include:

  - the **nature** of the interests;
  - the **impact** of processing;
  - any **safeguards** which are or could be put in place.

The **nature** of the interests includes:

- **the reasonable expectations of the individual**
  - would or should they expect the processing to take place? If they would then the impact of the individual is likely to have already considered by them and accepted. If they have no expectation, then the impact is greater and is given more weight in the balancing test
- the type of data (i.e. does that data require additional protection in the GDPR, such as data relating to a child or a special category)
  - Sensitive data is subject to stricter rules on its use. This must be a consideration in a balancing test, and
- the nature of the interests of the Controller (e.g. is it a fundamental right, public or other type of interest)
  - Does it add value or convenience?
  - Is it also in the interests of the individual?
  - If there may be harm as a result of the processing, is it unwarranted?

The **Impact** of processing includes:

- any positive or negative impacts on the individual, any bias or prejudice to the Controller, Third Party or to society of not conducting the processing
- the Controller needs to carefully consider the likelihood of impact on the individual and the severity of that impact. Is it justified? A much more compelling justification will be required if there is the likelihood of unwarranted harm occurring
- the status of the individual – a customer, a child, an employee, or other
- the status of the Controller - such as, whether a business organisation is in a dominant market position
- the ways in which data are processed, e.g. does the processing involve profiling or data mining? Publication or disclosure to a large number of people? Is the processing on a large scale?

[6]GDPR Article 6(1)(f)

Any Safeguards which are or could be put in place include:

- a range of compensating controls or measures which may be put in place to protect the individual, or to reduce any risks or potentially negative impacts of processing.
- these are likely to have been identified via a Data Protection Impact Assessment conducted in relation to the proposed activity.
- for example:

  - o data minimisation
  - o de-identification
  - o technical and organisational measures
  - o privacy by design
  - o adding extra transparency
  - o additional layers of encryption
  - o multi-factor authentication
  - o data retention limits
  - o restricted access
  - o opt-out options
  - o anonymisation
  - o encryption, hashing, salting
  - o other technical security methods used to protect data

- When a Controller is processing Personal Data relating to children, or special categories of Personal Data, special care should be taken with the balancing test, as this may give additional weight to the rights of the individual.

What happens if a balancing test is not in favour of the Controller?

- If the LIA process leads to a negative outcome (i.e. that the Controller cannot rely on Legitimate Interests for the processing operation), the Controller may wish to reduce the scope or refine the nature of the processing operation, or put in place compensating controls, then re-apply the balancing test.

- If such changes above are not practical, and therefore the outcome of an LIA remains that the Controller cannot rely on Legitimate Interests as a Lawful Basis for the processing, then the Controller must find an alternative legal basis or not proceed with such processing.

What if individuals are alleged to be engaged in illegal activities?

- An individual who may be engaged in alleged illegal activity, or whose data is processed in relation to an age restricted or regulated environment, still has rights and freedoms. However, where processing addresses illegal activity it may tip the balance in favour of the Controller, as the Legitimate Interest could be compelling.

What happens if the scope of the processing activity changes?

- An LIA should be revisited if the Controller becomes aware of any of a change in the factors relating to its outcome. The Controller may wish to set review periods for LIAs as a reminder. It will be necessary to conduct a new LIA if the purposes of the processing change.

(See the LIA Template – Appendix B)

Transparency and the Consumer

Under the GDPR individuals have the right to be informed about how their Personal Data is being processed. The Regulation clearly stipulates that this must be done in a concise, *transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child.*[7]

Any Controller wishing to rely on Legitimate Interests must inform individuals that it is processing Personal Data on this basis, what the Legitimate Interests are , and also notify individuals of their right to object to processing on these grounds. The information provided to individuals must be explicit, clear and separate from other information.

Informing individuals that you are relying on Legitimate Interests to process their Personal Data, may prove challenging. Controllers may wish to stress that this decision was taken ensuring the privacy rights of individuals were considered and not severely impacted, while emphasising the benefits such processing will provide to customers, supporters, etc.

In order to avoid notices becoming too detailed and difficult for individuals to clearly understand, Controllers may wish to use a layered approach, whereby individuals can click on a link to access more detailed information, should they wish to.

Below are examples of suggested text which could be included in a Privacy Notice which may assist in meeting a Controller's obligation to provide information to individuals. These are provided as examples only – the Controller will need to consider what processing it is doing and whether it is appropriate to rely on Legitimate Interests. Controllers may also wish to refer to the ICO's current guidance on privacy notices - 'Privacy notices, transparency and control'.

Example 1 – Online Privacy Notice

How do we use your personal information? [or similar heading as part of privacy notice]

We may process your personal information for our legitimate business interests.

e.g. fraud prevention/direct marketing/network and information systems security/data analytics/enhancing, modifying or improving our services/identifying usage trends/determining

the effectiveness of promotional campaigns and advertising. *[This section should highlight the areas where your business processes data for the purposes of its legitimate interests. Refer to Section [X] for examples of legitimate interests that your organisation may pursue.]*

Click here to learn more about what we mean by legitimate interests, and when we process your data for our legitimate interests.

You have the right to object to this processing if you wish and if you wish to do so please click here

The first "Click here" takes the visitor to more information (and optional table) where processing activities are set out, along with further details of what legitimate interests means.

"Legitimate Interests" means the interests of our company in conducting and managing our business [to enable us to give you the best service/products and the best and most secure experience].

For example, we have an interest in making sure our marketing is relevant for you, so we may process your information to send you marketing that is tailored to your interests.

It can also apply to processing that is in your interests as well.

For example, we may process your information to protect you against fraud when transacting on our website, and to ensure our websites and systems are secure.

When we process your personal information for our legitimate interests, we make sure to consider and balance any potential impact on you (both positive and negative), and your rights under data protection laws. Our legitimate business interests do not automatically override

your interests - we will not use your Personal Data for activities where our interests are overridden by the impact on you (unless we have your consent or are otherwise required or permitted to by law).

[Insert optional table, in which organisations may wish to include further detail]
e.g. The table below sets out further detail on the ways we process your data for our legitimate interests. If you have any concerns about the processing below, you have the right to object to processing that is based on our legitimate interests. For more information on your rights, please see "Your Rights" section below.

Example 2 – Online Privacy Notice

We process personal information for certain legitimate business purposes, which include some or all of the following:

- where the processing enables us to enhance, modify, personalise or otherwise improve our services / communications for the benefit of our customers
- to identify and prevent fraud
- to enhance the security of our network and information systems
- to better understand how people interact with our websites
- to provide postal communications which we think will be of interest to you
- to determine the effectiveness of promotional campaigns and advertising.

Whenever we process data for these purposes we will ensure that we always keep your Personal Data rights in high regard and take account of these rights. You have the right to object to this processing if you wish, and if you wish to do so please click here. Please bear in mind that if you object this may affect our ability to carry out tasks above for your benefit.

Example 3 – Data Collection Page
An alternative statement on a data collection page might be:

We may process your personal information for carefully considered and specific purposes which are in our interests and enable us to enhance the services we provide, but which we believe also benefit our customers. Click here to learn more about these interests and when we may process your information in this way.

Further layers of explanation as outlined above should be available to help inform the consumer fully of the purposes you intend to cover under Legitimate Interests.

Example 4 – Paper Forms
The above examples use a layered approach, which is easily achieved in an online environment. Where the information is being delivered in an offline environment, a "Definitions" section could be included to define Legitimate Interests with an appendix where further details of processing activities could be listed. Controllers may wish to refer to current guidance on drafting privacy notices for more detailed information on this point.

Where Personal Data is being collected offline, it will still be necessary to inform individuals how the Controller may process the information they provide. A balance is required between providing enough information while also ensuring a printed privacy notices do not become too long.

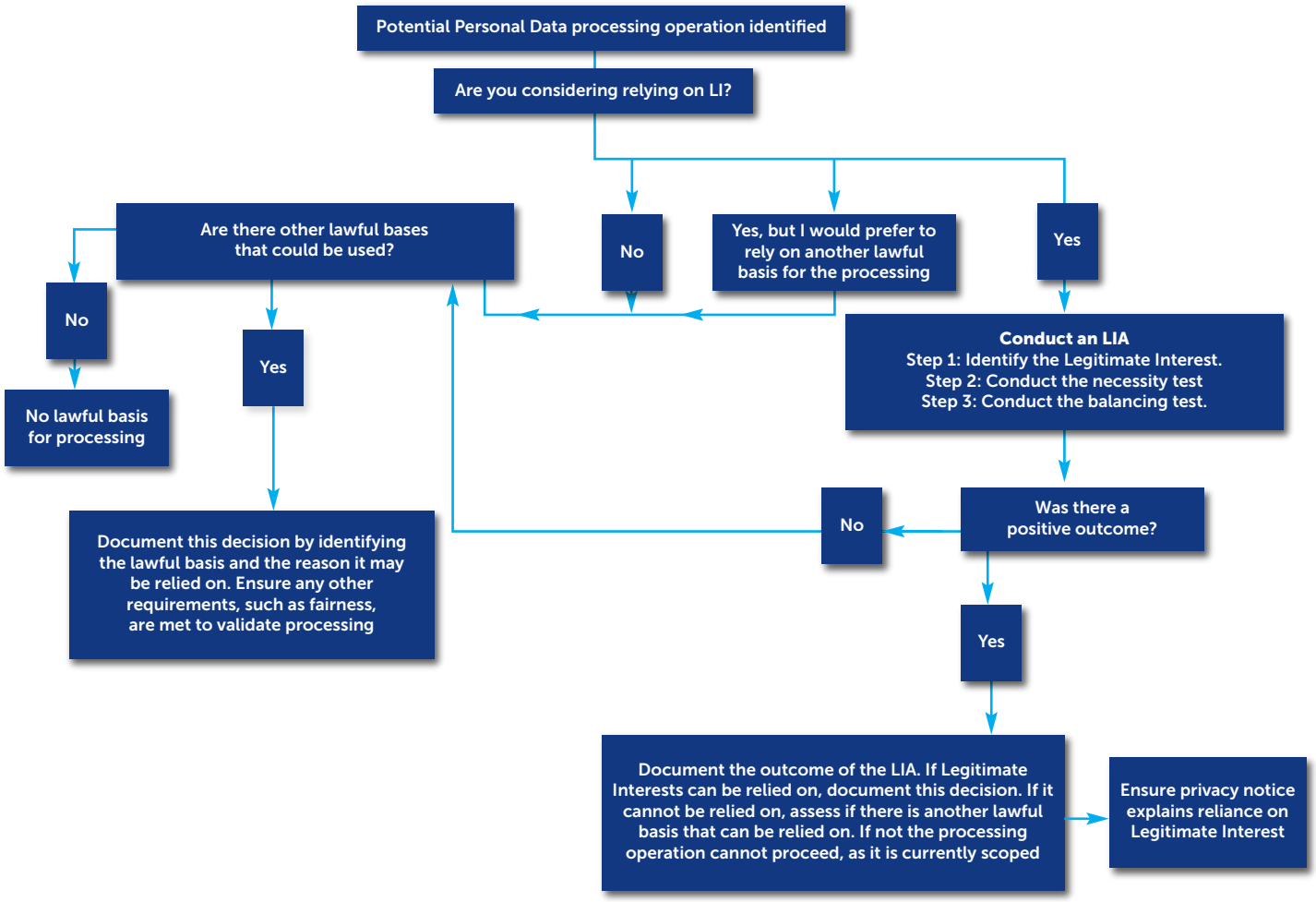
> We may process your information for carefully considered and specific purposes to enhance the services we provide. If you would like more information, please visit see our website: [Link to your current Privacy Notice here] or telephone us: [insert relevant name/department and contact number]

Example 5 – Mobile Format

> We may process your data for carefully considered purposes which are in our interests and enable us to enhance the services we provide. Click here to find out more.

Appendix A

Legitimate Interests (LI) process flow for selecting legal basis for processing



Appendix B

Legitimate Interests Assessment (LIA) Template

Introduction and Instructions
It is worth noting that while this LIA will help you determine if Legitimate Interests can be relied on, conclusions will be subjective and should be based on the experience and judgement of the individual or individuals completing the assessment.

- The LIA outcome should be documented as evidence and reviewed periodically, particularly where the criteria used in the assessment change materially in any way which could affect the outcome.
- **This template should be completed alongside the Data Protection Network's guidance on Legitimate Interests.**
- This Assessment can be modified to suit your own organisation, for example questions can be added as required from sector to sector.
- The LIA assumes that all other requirements relating to Article 5 of the GDPR (where applicable) have been satisfied. Where possible, evidence should be provided.

A) IDENTIFYING A LEGITIMATE INTEREST

	Question	Answer	Guidance
1	What is the purpose of the processing operation		The first stage is to identify to a Legitimate Interest – what is the purpose for processing the personal data?
2	Is the processing necessary to meet one or more specific organisational objectives?		If the processing operation is required to achieve a lawful business objective, then it is likely to be legitimate for the purposes of this assessment.
3	Is the processing necessary to meet one or more specific objectives of any Third Party?		While you may only need to identify one Legitimate Interest for the purposes of an LIA – the interest that you are seeking to rely on - it may be useful to list all apparent interests in the processing, those of you as the Controller, as well as those of any Third Party who are likely to have a Legitimate Interest.
4	Does the GDPR, ePrivacy Regulation or other national legislation specifically identify the processing activity as being a legitimate activity, subject to the completion of a balancing test and positive outcome?		For example: Legitimate Interests might be relied on where an individual's (including client or employee) information is processed by a group of companies for the purposes of administration (Recital 48). If the Controller is processing sensitive Personal Data in the employee context, then they may be able to rely on Article 9(2) (b).

B) THE NECESSITY TEST

	Question	Answer	Guidance
1	Why is the processing activity important to the Controller?		A Legitimate Interest may be elective or business critical; however, even if the Controller's interest in processing personal data for a specific purpose is obvious and legitimate, based on the objectives of the Controller, it must be a clearly articulated and communicated to the individual.
2	Why is the processing activity important to other parties the data may be disclosed to, if applicable?		A Legitimate Interest could be trivial or business critical, however, the organisation needs to be able to clearly explain what it is. Some purposes will be compelling and lend greater weight to the positive side of the balance, while others may be ancillary and may have less weight in a balancing test. Consider whether your interests relate to a fundamental right, a public interest or another type of interest. Just because the processing is central to what the organisation does, does not make it legitimate. It is the reason for the processing balanced against the potential impact on an individual's rights that is key. It is important to consider whose Legitimate Interests are being relied on. Understanding this will help inform the context of the processing. In combination with the reason the Personal Data is being processed, this information will determine the weight of the Legitimate Interest that needs to be balanced.
3	Is there another way of achieving the objective?		• If there isn't, then clearly the processing is necessary; or • If there is another way but it would require disproportionate effort, then the processing is still necessary; or • If there are multiple ways of achieving the objective, then a Privacy Impact Assessment should have identified the least intrusive means of processing the data which would be necessary; or • If the processing is not necessary (It is unlikely that there will be many scenarios where a processing operation is not necessary where it has been identified as being a means to achieve a stated business objective), then Legitimate Interests cannot be relied on as a lawful basis for that processing activity

C) THE BALANCING TEST

	Question	Answer	Guidance
1	Would the individual expect the processing activity to take place?		If individuals would expect the processing to take place then the impact on the individual is likely to have already considered by them and accepted. If they have no expectation, then the impact is greater and is given more weight in the balancing test
2	Does the processing add value to a product or service that the individual uses?		
3	Is the processing likely to negatively impact the individual's rights?		
4	Is the processing likely to result in unwarranted harm or distress to the Individual?		
5	Would there be a prejudice to Data Controller if processing does not happen?		
6	Would there be a prejudice to the Third Party if processing does not happen?		
7	Is the processing in the interests of the individual whose personal data it relates to?		
8	Are the legitimate interests of the individual aligned with the party looking to rely on their legitimate interests for the processing?		What are the benefits to the individual or society? If the processing is to the benefit of the individual, then it is more likely that Legitimate Interests can be relied on, as the individual's interests will be aligned with those of the Controller. Where the processing is more closely aligned with the interests of the Controller or a Third Party, than with those of the individual, it is less likely that the interests will be balanced and greater emphasis needs to be placed on the context of the processing and relationship with the individual.
9	What is the connection between the individual and the organisation?	• Existing customer • Lapsed/cancelled customer • Employee or contractor • Business client • Prospect (never purchased goods or services) • Supplier • None of above	
10	What is the nature of the data to be processed? Does data of this nature have any special protections under GDPR?	Data relating to a child etc.	If processing Special Categories of Personal Data, an Article 9 condition must be identified as the lawful basis of processing.

C) THE BALANCING TEST

	Question	Answer	Guidance
11	Is there a two-way relationship in place between the organisation and the individual whose personal information is going to be processed? If so how close is that relationship?	• Ongoing • Periodic • One-off No relationship, or relationship has effectively ceased	Where there is an ongoing relationship, or indeed a more formal relationship, there may well be a greater expectation on the part of the individual that their information will be processed by the organisation. The opposite is also possible but it does depend on the purpose of processing.
12	Would the processing limit or undermine the rights of individuals?		If processing would undermine or frustrate the ability to exercise those rights in future that might well affect the balance.
13	Has the personal information been obtained directly from the individual, or obtained indirectly?	• Directly • Indirectly • A mix of both	If the information was obtained directly from the individual then you should take due consideration of the notice of fair processing (e.g. your Privacy Notice), the relationship with the individual and their expectations of use. If the data was collected directly and these factors are positive, then it may help to tip the balance in favour of the processing operation. Where Personal Data is not collected directly, there may need to be a more compelling Legitimate Interest to overcome this. It will also depend on the context of the processing and if the organisation has a two-way relationship with the individual.
14	Is there any imbalance in who holds the power between the organisation and the individual?		Does the individual have a choice regarding the processing of their personal information? If the organisation has a dominant position, this will tip the balance slightly against the use of Legitimate Interests. That said, the rights and freedoms of individuals laid down in the GDPR go some way to redressing this issue. The Controller will need to consider how it addresses any imbalance of power to ensure individuals' rights are not impacted.
15	Is it likely that the individual may expect their information to be used for this purpose?	• Yes • No • Not sure	Given the relationship between the parties, services/products being provided, including the information notices available, would the individual reasonably expect or anticipate that their information would be used for those or connected purposes? The stronger the expectation, the greater the chances that Legitimate Interests can be relied on.
16	Could the processing be considered intrusive or inappropriate? In particular, could it be perceived as such by the individual or in the context of the relationship?		Processing should not be unwarranted - intrusion into the private life of an individual may be justified based on the nature of the relationship or special circumstances. However, the greater the intrusion, perceived or otherwise, the more overwhelming the Legitimate Interest should be and the more the rights of the individual must be considered within the balance. Consider here the way the data is processed (e.g. large scale, data mining, profiling, disclosure to a large number of people or publication).
17	Is a fair processing notice provided to the individual, if so, how? Are they sufficiently clear and up front regarding the purposes of the processing?		Remember that the more unusual, unexpected or intrusive the processing, the greater the importance of making the individual aware of the processing. Particularly where Legitimate Interests are to be relied on.
18	Can the individual, whose data is being processed, control the processing activity or object to it easily?	• Yes (cover how you do this in the next section on "Mitigation and Compensating Controls") • No • Partly Explain:	Giving the individual increased control or elements of control may help a Controller rely on Legitimate Interests where otherwise they could not. If individual control is not possible or not appropriate, explain why.

C) THE BALANCING TEST

	Question	Answer	Guidance
19	Can the scope of the processing be modified to reduce/mitigate any underlying privacy risks or harms?	• Yes (cover how you intend to do this in the next section "Mitigation and Compensating Controls"	This is a similar concept to a Data Protection Impact Assessment. Where a DPIA might identify potential privacy harms it also allows the organisation to mitigate the risk of non-compliance by adapting or altering the scope of the activity. The same is true for an LIA. If you conclude that the processing presents a privacy risk to the individual, the processing can be limited or adapted to reduce the potential impact.

D) SAFEGUARDS AND COMPENSATING CONTROLS

D) Safeguards and Compensating Controls
Safeguards include a range of compensating controls or measures which may be put in place to protect the individual, or to reduce any risks or potentially negative impacts of processing. These are likely to have been identified via a Privacy Impact Assessment conducted in relation to the proposed activity. For example: data minimisation, de-identification, technical and organisational measures, privacy by design, adding extra transparency, additional layers of encryption, multi-factor authentication, retention, restricted access, opt-out options. , hashing, salting, and other technical security methods used to protect data.

Please include a description of any compensating controls that will be put in place or are already in place to preserve the rights of the individual.

E) REACHING A DECISION AND DOCUMENTING THE OUTCOME

Using the responses above now document if you believe you are able to rely on Legitimate Interests for the processing operation. Please explain, perhaps using bullet points, why you are, or are not, able to rely on this legal basis. You should draw on the answers you have provided in this LIA.

Outcome of Assessment:

Signed by:	**Role:**
Dated::	
Review date:	

Appendix C

The GDPR Articles and Recitals relating to Legitimate Interests
Articles 6(1)(f), 13(1)(d), 14(2)(b), 21(4) 22(2)(b) and 49(1) & Recitals 47, 48, 49, 50 & 68

Article 6(1) (f) "Lawfulness of processing"	Processing shall be lawful only if and to the extent that at least one of the following applies: (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes; (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; (c) processing is necessary for compliance with a legal obligation to which the controller is subject; (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person; (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.
Article 13(1) (d) "Information to be provided where Personal Data are collected from the data subject	In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following information necessary to ensure fair and transparent processing in respect of the data subject: (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period; (b) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party; (c) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject and to object to processing as well as the right to Data Portability;

Article 14(2) (b) "Information to be provided where personal data have not been obtained from the data subject"

In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following information necessary to ensure fair and transparent processing in respect of the data subject:

(a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;

(b) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;

(c) the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject and to object to processing as well as the right to Data Portability;

(d) where processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;

(e) the right to lodge a complaint with a supervisory authority;

(f) from which source the personal data originate, and if applicable, whether it came from publicly accessible sources;

(g) the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

Article 21(4) "Right to Object"

1. The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to processing of personal data concerning him or her which is based on point (e) or (f) of Article 6(1), including profiling based on those provisions. The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing.

3. Where the data subject objects to processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.

4. At the latest at the time of the first communication with the data subject, the right referred to in paragraphs 1 and 2 shall be explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information.

5. In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, the data subject may exercise his or her right to object by automated means using technical specifications.

6. Where personal data are processed for scientific or historical research purposes or statistical purposes pursuant to Article 89(1), the data subject, on grounds relating to his or her particular situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest.

Article 22(2) (b) "Automated individual decision-making, including profiling"	1. The data subject shall have the right not to be subject to a decision based solely on automated processing including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her. 2. Paragraph 1 shall not apply if the decision: (a) is necessary for entering into, or performance of, a contract between the data subject and a data controller; (b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or (c) is based on the data subject's explicit consent.
Article 49(1) "Derogations for specific situations"	In the absence of an adequacy decision pursuant to Article 45(3), or of appropriate safeguards pursuant to Article 46, including binding corporate rules, a transfer or a set of transfers of personal data to a third country or an international organisation shall take place only on one of the following conditions: (a) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards; (b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request; (c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person; (d) the transfer is necessary for important reasons of public interest; (e) the transfer is necessary for the establishment, exercise or defence of legal claims; (f) the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent; (g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down by Union or Member State law for consultation are fulfilled in the particular case. Where a transfer could not be based on a provision in Article 45 or 46, including the provisions on binding corporate rules, and none of the derogations for a specific situation referred to in the first subparagraph of this paragraph is applicable, a transfer to a third country or an international organisation may take place only if the transfer is not repetitive, concerns only a limited number of data subjects, is necessary for the purposes of compelling legitimate interests pursued by the controller which are not overridden by the interests or rights and freedoms of the data subject, and the controller has assessed all the circumstances surrounding the data transfer and has on the basis of that assessment provided suitable safeguards with regard to the protection of personal data. The controller shall inform the supervisory authority of the transfer. The controller shall, in addition to providing the information referred to in Articles 13 and 14, inform the data subject of the transfer and on the compelling legitimate interests pursued.

Recital 47

The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller.

Such legitimate interest could exist for example where there is a relevant and appropriate relationship between the data subject and the controller in situations such as where the data subject is a client or in the service of the controller.

At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place.

The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing.

Given that it is for the legislator to provide by law for the legal basis for public authorities to process personal data, that legal basis should not apply to the processing by public authorities in the performance of their tasks.

The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned.

The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.

Recital 48

Controllers that are part of a group of undertakings or institutions affiliated to a central body may have a legitimate interest in transmitting personal data within the group of undertakings for internal administrative purposes, including the processing of clients' or employees' Personal Data.

The general principles for the transfer of personal data, within a group of undertakings, to an undertaking located in a third country remain unaffected.

Recital 49

The processing of personal data to the extent strictly necessary and proportionate for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted personal data, and the security of the related services offered by, or accessible via, those networks and systems, by public authorities, by computer emergency response teams (CERTs), computer security incident response teams (CSIRTs), by providers of electronic communications networks and services and by providers of security technologies and services, constitutes a legitimate interest of the data controller concerned.

This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping 'denial of service' attacks and damage to computer and electronic communication systems.

Recital 50

The processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected.

In such a case, no legal basis separate from that which allowed the collection of the personal data is required.

If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union or Member State law may determine and specify the tasks and purposes for which the further processing should be regarded as compatible and lawful.

Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be considered to be compatible lawful processing operations.

The legal basis provided by Union or Member State law for the processing of personal data may also provide a legal basis for further processing.

In order to ascertain whether a purpose of further processing is compatible with the purpose for which the personal data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account, inter alia: any link between those purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of data subjects based on their relationship with the controller as to their further use; the nature of the personal data; the consequences of the intended further processing for data subjects; and the existence of appropriate safeguards in both the original and intended further processing operations.

Where the data subject has given consent or the processing is based on Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard, in particular, important objectives of general public interest, the controller should be allowed to further process the personal data irrespective of the compatibility of the purposes.

In any case, the application of the principles set out in this Regulation and in particular the information of the data subject on those other purposes and on his or her rights including the right to object, should be ensured.

Indicating possible criminal acts or threats to public security by the controller and transmitting the relevant personal data in individual cases or in several cases relating to the same criminal act or threats to public security to a competent authority should be regarded as being in the legitimate interest pursued by the controller.

However, such transmission in the legitimate interest of the controller or further processing of personal data should be prohibited if the processing is not compatible with a legal, professional or other binding obligation of secrecy.

Recital 68

To further strengthen the control over his or her own data, where the processing of personal data is carried out by automated means, the data subject should also be allowed to receive personal data concerning him or her which he or she has provided to a controller in a structured, commonly used, machine-readable and interoperable format, and to transmit it to another controller. Data controllers should be encouraged to develop interoperable formats that enable Data Portability. That right should apply where the data subject provided the personal data on the basis of his or her consent or the processing is necessary for the performance of a contract. It should not apply where processing is based on a legal ground other than consent or contract. By its very nature, that right should not be exercised against controllers processing personal data in the exercise of their public duties. It should therefore not apply where the processing of the personal data is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of an official authority vested in the controller. The data subject's right to transmit or receive personal data concerning him or her should not create an obligation for the controllers to adopt or maintain processing systems which are technically compatible. Where, in a certain set of personal data, more than one data subject is concerned, the right to receive the personal data should be without prejudice to the rights and freedoms of other data subjects in accordance with this Regulation. Furthermore, that right should not prejudice the right of the data subject to obtain the erasure of personal data and the limitations of that right as set out in this Regulation and should, in particular, not imply the erasure of personal data concerning the data subject which have been provided by him or her for the performance of a contract to the extent that and for as long as the personal data are necessary for the performance of that contract. Where technically feasible, the data subject should have the right have the data transmitted directly from one controller to another.

Appendix D

Glossary of Terms

Consent
"Consent" of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of Personal Data relating to him or her - Article 4(11)

Controller
"Controller" means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of Personal Data; where the purposes and means of processing are determined by EU or Member State laws, the controller (or the criteria for nominating the controller) may be designated by those laws – Article 4 (7)

Data Portability
The data subject shall have the right to receive the Personal Data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the Personal Data have been provided (see more conditions in Article 20)

Processor
"Processor" means a natural or legal person, public authority, agency or any other body which processes Personal Data on behalf of the controller – Article 4(8)

Lawful Basis
The term 'Lawful Basis' was used in this Guidance where possible to emphasise that it is part of the 'lawfulness' requirement under the GDPR and to avoid potential confusion with references to a domestic/national legal basis for public task processing.

Legitimate Interests Assessment
A Legitimate Interests Assessment (or LIA) means an assessment carried out by a Controller to decide if a particular processing operation can rely on the Legitimate Interests provision in the GDPR as a lawful basis for processing that Personal Data. This is the same principle found in the ICO and Article 29 Working Party guidance and opinions.

Personal Data
"Personal Data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person - Article 4(1)

Processing
"Processing" means any operation or set of operations performed upon Personal Data or sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction – Article 4(2)

Special Categories of Personal Data
Article 9 defines special categories of data as "racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation"

Third Party
"Third Party" means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorised to process Personal Data – Article 4(10)