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RETENTION OF PERSONAL DATA: POLICY AND SCHEDULES

FOR: Employees, workers, consultants and partners

FOR: Clients, Prospects and Third Parties

ABOUT THIS POLICY

This Policy sets out Howes Percival LLP’s (“**we”**, “**our”**, “**us”**, the “**Firm”**) position in relation to the retention of personal data (being any information identifying any living person or information relating to a living person that we can identify (directly or indirectly) from that data alone or in combination with other identifiers we possess or can reasonably access. Examples of personal data include, but are not limited to, information revealing their name, address, email address, identification number, location data, online identifiers, and/or one or more factors specific to their physical, physiological, genetic, mental, economic, cultural or social identity).

This Policy is intended to support our Data Protection Policy (“**the DP Policy**”) and it adopts the definitions set out in the DP Policy. This Policy should also be read in conjunction with the DP Policy and the Firm’s File Retention and Destruction Policy (“**File Retention Policy**”) which sets out the Firm’s policy regarding client files and in particular the criteria adopted by the Firm in respect of the retention and destruction of client files. In the event of there being any conflict between this policy and the File Retention Policy in so far as it relates to Client files, the File Retention Policy shall prevail, to the extent that it is compliant with the GDPR.

The Firm has a responsibility to maintain its records and record keeping systems in accordance with the regulatory environment. This policy seeks to set out the Firm’s position with regard to the retention of personal data under the General Data Protection Regulation (**GDPR**) and any other laws and/or regulations that govern the processing of personal data from time to time.

This policy applies to all employees, workers, consultants and partners of the Firm (“**you**” or “**your**”). This policy is non-contractual and does not form part of the terms and conditions of your employment or engagement. The Firm may change, alter, amend or replace this policy at any time.

This policy is intended to ensure that the Firm processes personal data (whether in the form of client records, prospect data or other third party data and in respect of employee/worker/consultant/partner data) in accordance with the personal data protection principles set out in the GDPR, in particular that:

* Personal data must be collected only for specified, explicit and legitimate purposes. It must not be further processed in any manner incompatible with those purposes.
* Personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed. When Personal Data is no longer needed for specified purposes, it is deleted or anonymised as provided by these guidelines.
* Personal data must be accurate and, where necessary, kept up to date. It must be corrected or deleted without delay when inaccurate.
* Personal data must not be kept in an identifiable form for longer than is necessary for the purposes for which the data is processed.
* Personal data must be secured by appropriate technical and organisational measures against unauthorised or unlawful processing, and against accidental loss, destruction or damage.

James Howarth, our Data Protection Officer is responsible for overseeing this policy. Any questions about the operation of the policy and guidelines should be submitted to James Howarth.

Types of Personal Data

The Firm collects and processes personal data relating to its employees (including job applicants), workers, consultants, partners, clients, prospects, suppliers and other third parties including experts, legal counsel, and other parties in legal proceedings, contracts or other legal arrangements.

Location of Personal Data

Personal data relating to client’s, prospects, suppliers and other third parties is held by various departments throughout the Firm. It is recommended that each department identifies one member of staff who is responsible for that department’s records management in accordance with this policy.

Personal Data relating to employees (including job applicants), workers, consultants, and partners is held by the Firm’s HR Department. For the East Midlands region this is Katy Tebbutt and for East Anglia, this is Ann Chancellor.

General Principles on Retention and Erasure of Personal Data

The Firm's approach to retaining personal data is to ensure that it complies with the data protection principles referred to in this policy and, in particular, to ensure that:

* Records are regularly reviewed to ensure that they remain adequate, relevant and limited to what is necessary to support the Firm’s operational and/or employment needs (where applicable) and/or compliance with legal or regulatory requirements.
* Records are kept secure and are protected against unauthorised or unlawful processing and against accidental loss, destruction or damage. Where appropriate the Firm will seek to use anonymization to prevent identification of individuals.
* When records are destroyed, whether held as paper records or in electronic format, the Firm will ensure that they are safely and permanently erased. Consideration needs to be given to whether the document should be destroyed or subject to a further period of retention or permanent retention as an archive.

Retention and Erasure of Personal Data

When determining the appropriate retention period for personal data the Firm has regard to the purpose for which that personal data was collected. However, it also has regard to legal risk and may keep records for at least seven years (and in some instances longer) after any contractual relationship with us has ended.

The criteria that we may consider when deciding the appropriate retention period for Personal Data may vary but will depend on the following (without limitation):

* Any instructions or rules emanating from our regulator
* What our insurance providers require and what our insurance terms say
* The purpose for which we hold the Personal Data
* The amount, nature and sensitivity of the Personal Data
* The potential risk of harm from unauthorised use or disclosure of such Personal Data
* What alternative means we have for achieving our purposes
* The legal limitation periods for bringing claims and whether we need the Personal Data to bring or defend any proceedings
* Any legal or regulatory requirements
* Any specific requests to hold such Personal Data from a Data Subject
* Any legal, accounting or reporting requirements
* Whether we need to hold on to such Personal Data to assist us with the performance of our services or the performance of a contract; and/or
* Any orders for preservation of evidence, including Personal Data.

We have set out in the tables below a summary of the types of personal data that we hold and the retention period that we consider to be appropriate. However, the tables are intended to be guides only and the Firm may depart from the retention periods specified should there be a legitimate and lawful reason for doing so. In such circumstances, the Firm will ensure that any retention of Personal Data that goes beyond that recommended in the tables below, will take into account the Personal Data protection principles and that the Firm otherwise acts in accordance with the DP Policy.

The Firm will also review records on a regular basis to establish whether the retention of Personal Data held in those records is still necessary or whether it may be anonymised or removed.

Please note the recommended retention periods set out in the below tables are subject to further review and may be changed from time to time.

**RETENTION OF CLIENT, SUPPLIER AND THIRD PART PERSONAL DATA - SCHEDULE**

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of record containing personal data** | **Department responsible for record** | **Retention period** | **Reasons for retention period including where applicable any legal requirements** |
| ***Client Files***  This may include:   * Signed engagement letters * Communications * Documents and drafts of documents * Records of telephone calls * Agreements * Pleadings * Court orders * Counsel’s opinions | Department with conduct of the file | 7 years unless otherwise specified below or there is a specific reason for longer retention such as the possibility of a warranty or indemnity claim after more than 7 years.  Specific derogations from the 7 year standard rule:   * Family matters which involve one or more minors in which case the file shall be retained for 7 years after the youngest child reaches majority age. * Where a charging order has been obtained whether by or against our client 16 years; * Insolvency disqualification files in which any disqualification remains outstanding in which case the file shall be retained until such time as the disqualification has been concluded; * Files relating to wills, trusts, probate succession and estate planning shall be retained until such time as a Partner of the firm determines that their retention is no longer necessary * Files relating to new property leases where the length of the lease exceeds 7 years in which case the file shall be destroyed 2 years after the lease comes to an end; * Property purchase files shall be retained for a minimum of 12 years but 16 years in the case of complex matters * Re-mortgage files shall be retained for a minimum of 12 years but 16 years in the case of complex matters | Limitation Act 1980  Limitation Act 1980  To enable us to effectively respond to any queries or issues arsing out of the disqualification.  The nature of these types of files is that they may be called upon more than 7 years after the file has been closed.  It is in our legitimate interests to keep these types of files for at least the duration of the lease plus 2 years in case we are called upon to answer queries in relation to the lease or deal with any lease renewal/property litigation matters flowing from the expiration of the lease. |
| ***Supplier contracts***  This may include:   * Purchase orders * Signed contracts * Communications * Notices given or received | Facilities/Office managers | Life of contract plus 7 years | Limitation Act 1980 |
| ***CRM database***  This may include contact details and preferences of clients, prospects, suppliers and other third parties | Business Development and Marketing | The Firm’s CRM database will be reviewed on an annual basis and obsolete personal data removed or anonymised |  |
| ***Third party enquiries***  This may include enquiries which did not convert into a purchase | Individual fee earners who receive the query | 1 year |  |
| ***Data Subject Access Requests***  Any request from a data subject to exercise their rights under the GDPR (or other laws / regulations relating to data protection) | Data Protection Officer | 7 years from the conclusion of the request | Limitation Act 1980; GDPR |
| ***Records of Firm actions***  This may include:   * Claims brought by the Firm * Complaints against the Firm which do not result in a professional indemnity notification * Leases and related documents * Intellectual property applications and registration documents * Warranties | Complaints Partner  Firm’s Partners | In relation to legal claims, 7 years from the conclusion, settlement or withdrawal of the claim; in relation to leases, the duration of the lease plus 2 years; in relation to warranties, the life of the warranty plus 2 years; in relation to complaints 7 years from the conclusion of our complaints procedure; in relation to intellectual property applications and registration documents the duration of any registration/application process plus 2 years. | e.g. Limitation Act 1980 |
| ***Claims Against the Firm which result in a Professional Indemnity Notification***  This may include:   * Correspondence with the complainant and our insurers; * Insurance notification documents; * Pleadings; * Court orders; * Documents | Partner with responsibility for notifying professional indemnity claims | 7 Years from the closing by our professional indemnity insurers of their file in relation to any such claim. | Limitation Act 1980 |
| ***Financial management and accounting records***  This may include:   * Annual plans and budgets * Accounts payable and receivable ledgers * Annual audit reports * Financial statements * Bank statements, cancelled cheques, deposit slips * Business expense records * Electronic fund transfer documents * Invoices * Tax records | Accounts | The current financial year and 7 years prior to it. | Value Added Tax Act 1994; Limitation Act 1980 |
| ***Insurance records other than documents relating to claims under our professional indemnity insurance***  This may include:   * Insurance claims * Insurance applications * Insurance contracts and policies * Settlement or withdrawal of claims | Accounts; compliance officer; Partner with conduct of Professional Indemnity Claims; Facilities manager | In relation to insurance claims, 7 years from the conclusion, settlement or withdrawal of the claim.  In relation to other insurance related documentation 7 years from the conclusion of the insurance policy to which it relates | Limitation Act 1980 |

**RETENTION OF EMPLOYEE/WORKER/CONSULTANT/PARTNER PERSONAL DATA – SCHEDULE**

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| **Type of employment record** | **Retention period and reasons (where appropriate)** |
| Recruitment records  These may include:  Completed online application forms or CVs.  Equal opportunities monitoring forms.  Assessment exercises or tests.  Notes from interviews and short-listing exercises.  Pre-employment verification of details provided by the successful candidate. For example, checking qualifications and taking up references. (These may be transferred to a successful candidate's employment file.)  Criminal records checks. (These may be transferred to a successful candidate's employment file if they are relevant to the ongoing relationship.) | Six months after notifying unsuccessful candidates of the outcome of the recruitment exercise. The reason for this is to take account of the time limits for any unsuccessful candidate to bring a claim for discrimination or unfair treatment arising from the recruitment process (S.123 Equality Act 2010).  For successful candidates who are employed by the Firm, some of these records (where relevant to the on-going employment relationship) may be retained whilst the candidate remains employed by the Firm. In general, however, application forms, CVs, assessment exercises and tests and notes from interviews will be retained no longer than 2 years after the employment has commenced. |
| **Immigration checks** | Three years after the termination of employment. |
| **Contracts** |  |
| These may include:  Written particulars of employment.  Contracts of employment or other contracts.  Documented changes to terms and conditions. | While employment continues and for seven years after the contract ends. This is to take into account the limitation periods for bringing claims against the firm – Limitation Act 1980. |
| **Collective agreements** |  |
| Collective workforce agreements and past agreements that could affect present employees. | Any copy of a relevant collective agreement retained on an employee's record will remain while employment continues and for seven years after employment ends to take into account limitation periods for claims. |
| **Payroll and wage records** |  |
| Payroll and wage records  Details on overtime.  Bonuses.  Expenses.  Benefits in kind. | These must be kept for at least three years after the end of the tax year to which they relate. However, given their potential relevance to pay disputes they will be retained for seven years after employment ends.  See: Gov.uk: PAYE and payroll for employers; <https://www.gov.uk/paye-for-employers/keeping-records> ; and s.5 Limitation Act 1980; and the National Minimum Wage Regulations 1998 (as amended). |
| Current bank details | Bank details will be deleted as soon after the end of employment as possible once final payments have been made |
| PAYE records | These must be kept for at least three years after the end of the tax year to which they relate. However, given their potential relevance to pay disputes they will be retained for seven years after employment ends. |
| Payroll and wage records for LLPs | These must be kept for six years from the financial year-end in which payments were made. However, given their potential relevance to pay disputes they will be retained for seven years after employment ends. |
| Records in relation to hours worked and payments made to workers | These must be kept for three years beginning with the day on which the pay reference period immediately following that to which they relate ends. However, given their potential relevance to pay disputes they will be retained for seven years after the working relationship ends (Working Time Regulations 1998 and Limitation Act 1980). |
| Travel and subsistence. | While employment continues and for seven years after employment ends (Limitation Act 1980). |
| Record of advances for season tickets and loans to employees | While employment continues and for seven years after employment ends. |
| **Personnel records** |  |
| These include:  Qualifications/references.  Consents for the processing of special categories of personal data.  Annual leave records.  Annual assessment reports.  Disciplinary procedures.  Grievance procedures.  Death benefit nomination and revocation forms.  Resignation, termination and retirement. | While employment continues and for seven years after employment ends (Limitation Act 1980). |
| **Records in connection with working time** |  |
| Working time opt-out | Three years from the date on which they were entered into (Working Time Regulations 1998) |
| Records to show compliance, including:  Time sheets for opted-out workers.  Health assessment records for night workers. | Three years after the relevant period (Working Time Regulations 1998) |
| **Maternity records** |  |
| These include:  Maternity payments.  Dates of maternity leave.  Period without maternity payment.  Maternity certificates showing the expected week of confinement. | Four years after the end of the tax year in which the maternity pay period ends (Regulation 26, The Statutory Maternity Pay (General) Regulations 1986 (as amended). |
| **Accident records** |  |
| These are created regarding any reportable accident, death or injury in connection with work. | For at least four years from the date the report was made (to take into account limitation period under Limitation Act 1980 and time for issuing and serving proceedings). |
| **CCTV images in Northampton** |  |
| Used for security of Northampton premises and to detect and prevent crime and to protect the health and safety of employees and visitors to the Northampton office | There is no statutory retention period so regard must be given to Article 5, GDPR. A record or audit trail should be retained and if there is no reason to retain the recorded information, it should be deleted. Recommend that if there is no specific reason for retaining recordings, these should be retained for no longer than 2 months from the date of first recording. However, Retention should reflect the Firm’s purposes for recording the information. Recordings may be kept longer where a law enforcement body is investigating a crime and have asked for the recordings to be preserved – Paragraph 5.2.5 ICO Code of Practice for Surveillance Cameras. |

*The Firm’s Data Protection Officer is responsible for this Policy which was adopted on 8 May 2018.*