

## Data Protection Impact Assessment

### Submitting controller details

Name of controller	North West Leicestershire DC
Subject	Transfer of TUPE data to new leisure services provider
Name of controller contact (delete as appropriate)	Paul Sanders (Head of Community Services) Mike Murphy (Head of Human Resources)
Date	8 March 2019

### Step 1: Identify the need for a DPIA

Explain broadly what project aims to achieve and what type of processing it involves. You may find it helpful to refer or link to other documents, such as a project proposal. Summarise why you identified the need for a DPIA.

Transfer of TUPE Data to an incoming leisure services provider. This ~~will~~ is required by law not less than 28 days before the transfer of staff which is scheduled for 1 May 2019. The processing which is envisaged by this DPIA is the sharing of employment information a few weeks before the last day on which the sharing is required by law to aid the smooth transition of staff to the new provider.

Further detail of the leisure project as a whole and its impact on staff is set out in various Cabinet reports, the latest of which is 5 February 2019.

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## Step 2: Describe the processing

**Describe the nature of the processing:** how will you collect, use, store and delete data? What is the source of the data? Will you be sharing data with anyone? You might find it useful to refer to a flow diagram or other way of describing data flows. What types of processing identified as likely high risk are involved?

Data is the employment data of Leisure Services staff who are due to be transferred to the new provider under TUPE on 1 May 2019. Data has already been collected is securely stored on the Council's iTrent HR system.—~~What system is the data stored on?~~

Access to this system is limited based on management lines. The work to be done in collating the information for sharing will be carried out by [REDACTED] in the HR team. TUPE law requires the original employer to keep the data up to date until the transfer is complete and notify the incoming provider of any updates. After the transfer, the data will be retained by the HR team in accordance with its usual data retention policies in respect of former staff. Who will manage this? When will we delete the data? How was the data originally collected? Accuracy of data?

~~The processing that is required for the outsourcing project is the sharing of this data with the incoming service provider.~~ Sharing will occur by placing the data in a secure online dataroom which the supplier can access. The data room is hosted by the secure file sharing system provider "Filezilla" which is based within the EEA (Germany). [REDACTED] has been given password-protected access to this file sharing system by the incoming provider. Once the data is uploaded, it can only be accessed by the authorised employees of the incoming service provider. This provider is based in the UK and is bound by responsibilities as data controller under the DPA 2018/GDPR 2016/679 and will be further bound by the security requirements set out in the data sharing agreement. The process of uploading to the secure site and retrieval from it should be completed within a single day.—~~Where is the dataroom? How will they access it? Length of time this will take?~~

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**Describe the scope of the processing:** what is the nature of the data, and does it include special category or criminal offence data? How much data will you be collecting and using? How often? How long will you keep it? How many individuals are affected? What geographical area does it cover?

Data is Personal Data and includes employment details, age, pension rights, salaries, etc. as set out in clause 4 of the Data Sharing Agreement (attached). This project requires the sharing of this data in relation to all staff who work in the leisure centres (Hermitage and Hood Park) as well as the casual staff (sports coaches, lifeguards, etc) who currently support the delivery of leisure services. The total number of staff is 250. Some of the data subjects are aged under 18 but all are of working age (over 16).

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Having considered the reason for the processing (as described above) it has been decided that it is not necessary to share certain equalities monitoring data that constitutes "special

category data". This demonstrates that the processing has been limited to only that necessary to realise the intended benefits.

One aspect of "special category data" will be shared, namely trade union membership. This decision has been made because the incoming provider has offered to continue the Council's practice of paying trade union fees on behalf of staff as a salary deduction. This activity will provide an administrative benefit to the data subjects themselves and so the risk of transferring such data is deemed to be justifiable. Review sharing agreement Clause 4  
Special Category data:

- ~~ethnic origin;~~
- ~~race~~
- ~~politics;~~
- ~~religion;~~
- ~~trade union membership;~~
- ~~genetics;~~
- ~~biometrics (where used for ID purposes);~~
- ~~health;~~
- ~~sex life; or~~
- ~~sexual orientation.~~

The type of data being shared is listed in Clause 4 of the Data Sharing Agreement which will be put in place for this sharing (attached).

How much data are we collecting? How many employees? Retention on our side? Which services does this cover (Hermitage/Hood Park staff)?

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**Describe the context of the processing:** what is the nature of your relationship with the individuals? How much control will they have? Would they expect you to use their data in this way? Do they include children or other vulnerable groups? Are there prior concerns over this type of processing or security flaws? Is it novel in any way? What is the current state of technology in this area? Are there any current issues of public concern that you should factor in? Are you signed up to any approved code of conduct or certification scheme (once any have been approved)?

The context of the processing is the TUPE transfer of members of staff. Sharing this data will be required by law once the contract that gives rise to the TUPE transfer is signed. The processing being covered by this DPIA is the early sharing of that data in advance of the contract being signed.

Data subjects are aware of the incoming provider and the TUPE transfer and so they would expect their employment details to be shared at some point. Early Discussions with staff at consultation sessions relating to the transfer give the impression that early sharing would even be welcomed by the employees so that they can be properly consulted at an early stage and be given certainty as to what the transfer process will be. Evidence that it is welcomed The sharing of TUPE data in this way is not novel and appropriate security arrangements are in place through the secure dataroom and are required by the data sharing agreement (as set out above). ~~What security arrangements? Where can they be found?~~

~~Concerns of processing/security flaws to be addressed~~

~~Include that no children/vulnerable data will be shared—Lifeguards age?~~

~~Expand on what technology we are using and how this will be managed~~

**Describe the purposes of the processing:** what do you want to achieve? What is the intended effect on individuals? What are the benefits of the processing – for you, and more broadly?

As described above the purpose of the processing is the early sharing of TUPE data so that the transition of staff under TUPE can be as smooth as possible for both those staff and service users. We are doing this early to enable mobilisation work to commence before the formal contract for service delivery is signed (at which point the TUPE regulations will mandate the transfer of the data). Signing the contract is the last step in a long procurement process which began in January 2018 and about which the staff had been consulted about prior to that. The benefit of beginning mobilization early is that it allows appropriate time for a complicated matrix of contractual documents to be drawn together without delaying the start of the new service delivery. Any delay would have a knock on effect on the commencement of construction of the new £20m leisure centre, delaying the improvements that it will bring to the community.

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The benefit to the staff is that the new employer has more time to integrate the data into their procedures. In particular, the new operator can confirm the new arrangements to the local government pension fund so that staff can have certainty that their pension arrangements will continue unaffected.

These benefits are viewed by the project team and senior management to outweigh the risks (as mitigated) of processing the data in this way.

~~Why are we doing this early? What are the benefits?~~

~~What is the benefit for us and the benefit for the data subject?~~

~~What do we want to achieve? Be more precise..~~

### Step 3: Consultation process

**Consider how to consult with relevant stakeholders:** describe when and how you will seek individuals' views – or justify why it's not appropriate to do so. Who else do you need to involve within your organisation? Do you need to ask your processors to assist? Do you plan to consult information security experts, or any other experts?

Staff have been consulted throughout the procurement process and have already met with the data recipient since the decision was made to appoint them. ~~Have all staff met?~~  
~~When/How did they meet?~~The new provider came to each leisure center in the second half of January 2019 and presented to staff on the post-transfer proposals. Subsequent meetings have also been held to the extent that measurements for new uniforms have already been taken. Staff are aware of the TUPE transfer and the necessity to transfer personal data from multiple engagement sessions throughout the procurement process (and beforehand) as well as through an information leaflet that was circulated to affected staff. Regular updates have also been given to staff through a text messaging system. In addition, staff representatives from relevant trade unions have been consulted as the process has developed. Staff have been given multiple opportunities to raise concerns both through group meetings and by making managers available individually. ~~How do we know they are aware? Have we provided letters?~~ ~~NAs a result of the in-depth engagement that has taken place with staff, no further consultation is deemed necessary for this item of processing.~~

~~Have we given staff an opportunity to give their views?~~

~~Who will be supporting in this transfer? HR, IT, Legal, Leisure management?~~

~~Why do we deem no further consultation is necessary? (back up)~~

## Step 4: Assess necessity and proportionality

**Describe compliance and proportionality measures, in particular:** what is your lawful basis for processing? Does the processing actually achieve your purpose? Is there another way to achieve the same outcome? How will you prevent function creep? How will you ensure data quality and data minimisation? What information will you give individuals? How will you help to support their rights? What measures do you take to ensure processors comply? How do you safeguard any international transfers?

Lawful basis for processing is that it is necessary for the performance of a -Legitimate Interest GDPR 6 1 (f). The Legitimate Interests in question is the delivery of leisure services and the proper employment of staff in order to carry this out. The benefits to the interests of all parties in respect of this early sharing of data is detailed above.

Include why we are doing this early

Data quality and minimisation needs to be coveredThe data being shared will only be that required for the transfer of staff under TUPE. No additional data will be shared (as mentioned above in respect of special category data).

How will we support their rights? (right to object, rectification, accuracy, access) will they contact us or new leisure provider? It is briefly covered in the ISAWhile the employees remain employed by the Council, their rights in respect of their data will remain unchanged. Any amendments to their data must be passed through to the new employer by the Council as described above.

A data sharing agreement will be put in place which, amongst other matters, requires both parties to cooperate to ensure the accuracy of the data and to give effect to the rights of all data subjects. The data sharing agreement also states that any ~~include that~~ international transfers must be done in compliance with the GDPR. ~~included in ISA~~Processing is necessary for the continued successful delivery of leisure services through the smooth transition of staff. The imperative for the early transfer of information along with the benefits that it will provide to the leisure project, the new provider and the staff are detailed above. ~~There is no other way of achieving this outcome~~We can achieve this outcome through TUPE ~~although we need to state why we are doing this early.~~ Function creep will be prevented by a data sharing agreement which limits the purposes for which the data can be used. This agreement will ensure that the data recipient complies with relevant legislation.

## Step 5: Identify and assess risks

Describe source of risk and nature of potential impact on individuals. Include associated compliance and corporate risks as necessary.	Likelihood of harm	Severity of harm	Overall risk
Risk that data recipient uses data other than for the agreed purpose (the TUPE transfer)	Remote	Minimal	Low
Risk that data is transferred in an inappropriate or insecure manner.	Remote	Minimal	Low

## Step 6: Identify measures to reduce risk

Identify additional measures you could take to reduce or eliminate risks identified as medium or high risk in step 5				
Risk	Options to reduce or eliminate risk	Effect on risk	Residual risk	Measure approved
Loss of data	Use of secure data room rather than email to share data	Reduces	Minimal	Yes
Compliance of data recipient	Use of legally binding data sharing agreement	Reduces	Minimal	Yes

## Step 7: Sign off and record outcomes

Item	Name/position/date	Notes
Measures approved by:	Paul Sanders	Integrate actions back into project plan, with date and responsibility for completion
Residual risks approved by:	Paul Sanders	If accepting any residual high risk, consult the ICO before going ahead
DPO advice provided:	Yes	DPO should advise on compliance, step 6 measures and whether processing can proceed

Summary of DPO advice:

Undertake DPIA and use Data Sharing Agreement. Lawful basis for processing is Legitimate Interests

The transfer of TUPE data prior to contracts being signed I deem as a risk to the data subjects and ourselves as a controller. We are transferring the data in advance of the contract to enable the Leisure Provider to have a smooth transition of data. Whilst we are working together to operate a smooth transition we must remain vigilante and mitigate any risks involved. We do not currently have a date to which the contract will be signed. We must consider whether the data being held by the new provider for a length of time in advance of contracts is necessary and practical. We can achieve the same outcome once contracts are signed and we are required to do so by law.

Discussed special category data risk with [REDACTED]. Trade union membership data will be transferred to ensure that individuals membership is not annulled. No further special category data will be transferred prior to contract. [REDACTED] to ensure that there is a process implemented to safeguard special category data from being transferred.

The data room will provide a secure method of transferring the data. The password must only be shared with authorised staff and we must ensure that this is shared securely and not disclosed to an unauthorised individual.

Advised to compose an ISA to provide a framework to ensure the transfer of data is secure, confidential and risk is mitigated. To include lawful basis for processing – Legitimate Interests GDPR 6 1 (F)

Once the transfer is complete we must terminate the data room and manage our data inline with our retention schedule. As this data is now transferred to the new provider we must adopt a procedure to delete/retain data that we hold and is no longer required to be lawfully processed by ourselves as a data controller.

~~..To be completed by DPO.~~

DPO advice accepted or overruled by: Paul Sanders	Accepted.	If overruled, you must explain your reasons
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Comments:  
DPO advice to carry out DPIA and implement Data Sharing Agreement accepted.

Consultation responses reviewed by:	N/A	If your decision departs from individuals' views, you must explain your reasons
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Comments:

Consultation undertaken as part of wider staff discussions around the TUPE transfer.

This DPIA will kept under review by:	Paul Sanders	The DPO should also review ongoing compliance with DPIA
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