

Memorandum of Understanding regarding compliance with Data Protection Law

1.0 INTRODUCTION

- 1.1 The Local Government Pension Scheme (“**LGPS**”) in England and Wales is an occupational pension scheme registered under section 153 of the Finance Act 2004 and its rules are currently set out in The Local Government Pension Scheme Regulations 2013 (SI 2013/2356) as amended (“**LGPS Regulations**”).
- 1.2 The LGPS is administered locally by administering authorities which are defined in Regulation 2 of the LGPS Regulations and listed in Part 1 of Schedule 3 of the LGPS Regulations.
- 1.3 Wolverhampton City Council (“**Administering Authority**”) is an administering authority under the LGPS Regulations. The Administering Authority manages and administers the West Midlands Pension Fund (the “**Fund**”) within the LGPS in accordance with its statutory duty under Regulation 53 of the LGPS Regulations. Employers employing employees who are eligible to be members of the LGPS will participate in the Fund as a “**Scheme Employer**” (as defined in schedule 1 of the LGPS Regulations). The Administering Authority and the Scheme Employer (together the “**Parties**”) are required to share personal data relating to the Scheme Employer’s current and former employees who participate in the Fund (the “**Members**”) and their dependents, in order for the Administering Authority to fulfil its statutory duties to manage and administer the Fund under Regulation 53 of the LGPS Regulations and provide the Members with benefits upon retirement, pay ill-health benefits, pay death grants, pay survivors’ pensions to Members’ spouses, civil partners and co-habiting partners, pay children’s pensions upon the death of the Member, offer Members the option of paying additional voluntary contributions to one or more providers in accordance with Regulations 1 – 52 of the LGPS Regulations.
- 1.4 Scheme Employers are under a statutory obligation, as detailed in Regulation 80 of the LGPS Regulations, to provide certain personal data relating to its Members to the Administering Authority, including the Member’s name, gender, date of birth, national insurance number, address, pensionable pay, employer and employee pension contributions, details of any additional pension contributions and additional voluntary contributions. The Fund requires this information to be provided on a monthly basis by the Employer, the timeliness and quality of which is monitored using the Pension Administration Strategy.

1.5 This Memorandum of Understanding sets out:

- (a) the basis on which data will be shared between the Parties;
- (b) the Administering Authority's expectations of the Scheme Employer during its participation in the Fund;

in order to comply with Data Protection Law, including the UK General Data Protection Regulation.

1.6 References to "**Data Protection Law**" in this Memorandum of Understanding mean the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) (as amended), the Data Protection Act 2018, the UK General Data Protection Regulation and all applicable laws and regulations relating to personal data and privacy which are enacted from time to time, including (where applicable) the guidance and codes of practice issued by the Information Commissioner's Office and any other competent authority.

2.0 DATA CONTROLLERS

2.1 The Parties acknowledge that they will:

- (a) not hold a pool of joint data to which both parties have access;
- (b) be separate and independent data controllers in relation to the copies of the Members' personal data they respectively hold;
- (c) act as data controller in relation to personal data controlled by them;
- (d) each be responsible for complying with the requirements in Data Protection Law that are applicable to them as data controllers.

2.2 References to Members' personal data includes personal data relating to the Members' dependents (including children) and spouses/civil partners (where applicable).

3.0 DATA SHARING

3.1 The Parties confirm that they understand their respective obligations under Data Protection Law as data controllers and agree to only process personal data relating to the Members:

- (a) fairly and lawfully and in accordance with the data protection principles set out in Data Protection Law;
- (b) where there are lawful grounds for doing so; and

- (c) in accordance with Data Protection Law and best practice guidance (including the Data Sharing Code issued by the Information Commissioner's Office and updated from time to time).
- 3.2 Each Party will separately inform the Members (as required under Data Protection Law) of the respective purposes for which they will each process their personal data and provide all required information to ensure that the Members understand how their personal data will be processed in each case by the Administering Authority or Scheme Employer (as applicable). The Scheme Employer's privacy notice to Members will inform them that their personal data will be provided to the West Midlands Pension Fund.
- 3.3 Each Party confirms that it understands its respective obligations under Data Protection Law, to ensure that the Members' personal data of which it is a data controller is kept and used securely at all times and agrees to take such technical and organisational security measures against unauthorised and unlawful processing of, accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Members' personal data transmitted, stored or otherwise processed as may be required. Such measures will have due regard to the state of technological development and the cost of implementation of these measures, to ensure a level of security appropriate to the harm that might result from such processing and the nature, scope, context and purposes of processing the Members' personal data and the risk or likelihood and severity for the rights and freedoms of data subjects. Such measures will ensure:
 - (a) the ongoing confidentiality, integrity, availability and resilience of processing the Members' personal data;
 - (b) the ability to restore the availability and access to the Members' personal data in a timely manner in the event of a physical or technical incident;
 - (c) carrying out of regular testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 3.4 Each Party undertakes to notify the other as soon as practicable if an error is discovered in the Members' personal data of which it is a data controller and which was received from or a copy of which has been provided to the other Party, to ensure that such other Party is then able to correct its own records. This will happen whether the error is discovered through existing data quality initiatives or is flagged up through some other route (such as the existence of errors being directly notified to the Administering Authority or Scheme Employer (as appropriate) by the Member (or the Member's dependents, spouse/civil partner) themselves).

4.0 TRANSFER OF MEMBERS' PERSONAL DATA

4.1 The Parties agree that Members' personal data will only be transferred from one Party to the other via an acceptable method specified by the Administering Authority which may include any of the following:

- (a) Face to face
- (b) Courier
- (c) Secure email
- (d) SFTP link
- (e) Access secure website (Employer Portal)
- (f) Via encrypted USB or hard drive

4.2 Each Party will, when transferring the Members' personal data of which it is the data controller to the other Party, ensure that the data is secure during transit (whether physical or electronic).

4.3 If either the Administering Authority or the Scheme Employer appoints professional advisers, third party administrators or another entity which provides other services involving the transfer of Members' personal data, those third parties will be data processors or data controllers in their own right. The Administering Authority or the Scheme Employer (as applicable) will comply with its own obligations in accordance with Data Protection Law (in particular, by ensuring that any entity to which it transfers Members' personal data also complies with Data Protection Law) and shall ensure that nothing in the terms of engagement between the Administering Authority or the Scheme Employer (as applicable) and such third party would contradict this Memorandum of Understanding.

5.0 RIGHTS OF MEMBERS (INCLUDING THE MEMBER'S DEPENDANTS, SPOUSES/CIVIL PARTNERS (WHERE APPLICABLE))

5.1 Members have the right to request copies of their personal data from both the Fund and Employer. Both parties have in place a formal process for accepting such requests which complies with their obligations under Data Protection Law. Each Party will be responsible for managing those requests under their own process. This Memorandum of Understanding does not impose an obligation to inform each other of such a request.

6.0 DATA SECURITY BREACHES AND REPORTING PROCEDURES

6.1 Each Party has in place a formal process for reporting breaches under Data Protection Law. Where a significant data breach occurs (significant in the opinion of the individual party in consideration of the obligations imposed by Data

Protection Law) it will inform the other party of the breach where it is believed such action will improve/mitigate any impact to the Member.

7.0 RESPONSIBILITIES OF SCHEME EMPLOYERS

- 7.1 Notwithstanding the statutory obligations which apply to Scheme Employers under the LGPS Regulations and as a data controller under Data Protection Law, the Administering Authority, as Administering Authority for the Fund, expects Scheme Employers participating in the Fund to comply with the responsibilities set out below in relation to Members' personal data.
- 7.2 On request, the Scheme Employer will inform the Fund's Data Protection Officer of any appointed qualified person to fulfil the role of data protection officer ("DPO") together with their contact details. If the Scheme Employer has not appointed a DPO, the Scheme Employer, on request, will inform the Fund's Data Protection Officer of the details of a nominated person for Data Protection Law compliance purposes.
- 7.3 The Scheme Employer will demonstrate to the Administering Authority's satisfaction when dealing with ill health early retirement applications for current employees that explicit Member consent has been received, which gives consent to processing by both the Scheme Employer and the Administering Authority. In the absence of such consent, the Administering Authority may not be able to process the Member's application.

8.0 REVIEW AND AMENDMENT OF MEMORANDUM OF UNDERSTANDING

- 8.1 The Administering Authority will review the Memorandum of Understanding when appropriate, taking into account any new or changed legislation, regulations or business practices. As a minimum this policy will be reviewed biennially to ensure it remains up to date with Fund processes, procedures and business objectives. The Administering Authority reserves the right to amend the Memorandum of Understanding at any time and with immediate effect and will provide written notice to the Scheme Employer of such amendment.

9.0 PUBLICATION AND INFORMATION

- 9.1 This Memorandum of Understanding will be published on the Fund's website with its Privacy Notice.

VERSION CONTROL

Version	2.0
Author	Rachel Howe, Data Protection Officer Head of Governance and Corporate Services
Date	April 2021
Review Date	April 2023