

## **Privacy Notice (when personal data is obtained directly from the data subject)**

Durham Professional Services Ltd

Gill Durham

0141 244 0246

[gill@durhamlimited.com](mailto:gill@durhamlimited.com)

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Version 2

The Company is a recruitment business which provides work-finding services to its clients and work-seekers. The Company must process personal data (including sensitive personal data) so that it can provide these services – in doing so, the Company acts as a data controller.

You may give your personal details to the Company directly, such as on an application or registration form or via our website, or we may collect them from another source such as a jobs board. The Company must have a legal basis for processing your personal data. For the purposes of providing you with work-finding services and/or information relating to roles relevant to you we will only use your personal data in accordance with the terms of the following statement.

### **1. Collection and use of personal data**

#### **a. Purpose of processing and legal basis**

The Company will collect your personal data (which may include sensitive personal data) and will process your personal data for the purposes of providing you with work-finding services. This includes for example, contacting you about job opportunities, assessing your suitability for those opportunities, updating our databases, putting you forward for job opportunities, arranging payments to you and developing and managing our services and relationship with you and our clients.

In some cases we may be required to use your data for the purpose of investigating, reporting and detecting crime and also to comply with laws that apply to us. We may also use your information during the course of internal audits to demonstrate our compliance with certain industry standards.

The legal bases we rely upon to offer these services to you are:

- Your consent
- Where we have a legitimate interest
- To comply with a legal obligation that we have
- To fulfil a contractual obligation that we have with you

#### **b. Legitimate interest**

This is where the Company has a legitimate reason to process your data provided it is reasonable and does not go against what you would reasonably expect from us. Where the Company has relied on a legitimate interest to process your personal data our legitimate interests is/are as follows:

Where the processing of an individual's personal data is based on a legitimate interest then the Company must set out the legitimate interests that they or a third party have pursued to process the data.

This can include for example:

- Managing your database and keeping work-seeker records up to date;
- Contacting the individual to seek your consent where you need it;
- Providing work-finding services to the individual, including sending their information to your clients where they have demonstrated an interest in doing that particular type of work but not expressly consented to you passing on their cv;
- Contacting the individual with information about similar products or services that they have used from you recently; and
- Passing work-seeker's information to debt collection agencies.

Legitimate interests is quite broad and therefore flexible. However, this does not mean it should be used without proper consideration and so organisations that wish to use legitimate interests should carry out an legitimate interests impact assessment.

Please note that **legitimate interests cannot be used to process sensitive personal data.**

Please see the new [ICO guidance on legitimate interests](#). We copy below an extract from that guidance:

### ***What is the 'legitimate interests' basis?***

*Article 6(1)(f) gives you a lawful basis for processing where:*

*"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."*

*This can be broken down into a three-part test:*

1. **Purpose test:** *are you pursuing a legitimate interest?*
2. **Necessity test:** *is the processing necessary for that purpose?*
3. **Balancing test:** *do the individual's interests override the legitimate interest?*

*A wide range of interests may be legitimate interests. They can be your own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.*

*The GDPR specifically mentions use of client or employee data, marketing, fraud prevention, intra-group transfers, or IT security as potential legitimate interests, but this is not an exhaustive list. It also says that you have a legitimate interest in disclosing information about possible criminal acts or security threats to the authorities.*

*'Necessary' means that the processing must be a targeted and proportionate way of achieving your purpose. You cannot rely on legitimate interests if there is another reasonable and less intrusive way to achieve the same result.*

*You must balance your interests against the individual's interests. In particular, if they would not reasonably expect you to use data in that way, or it would cause them unwarranted harm, their*

*interests are likely to override yours. However, your interests do not always have to align with the individual's interests. If there is a conflict, your interests can still prevail as long as there is a clear justification for the impact on the individual.*

### **c. Recipient/s of data**

The Company will process your personal data and/or sensitive personal data with the following recipients:

- Clients that you introduce or supply individuals to
- Candidates' former or prospective new employers that you obtain or provide references to
- The Recruitment and Employment Confederation
- Any other third parties who carry out audits to ensure that you run your business correctly
- Any umbrella companies that you pass candidate data to
- Our IT and CRM providers
- Any public information sources and third-party organisations that we may use to carry out suitability checks on work-seekers e.g. Companies House, the Disclosure and Barring Service (DBS), National College for Teaching and Leadership (NCTL), Nursing and Midwifery Council (NMC), General Medical Council (GMC), DVLA, credit reference agencies
- Government, law enforcement agencies and other regulators e.g the Police, Home Office, HMRC, Employment Agencies Standards Inspectorate (EASI), Local Authority Designated Officers (LADOs), GLAA,
- Any other organisations an individual asks us to share their data with.

### **d. Statutory/contractual requirement**

Your personal data is required by law and/or a contractual requirement (e.g. our client may require this personal data), and/or a requirement necessary to enter into a contract. You are obliged to provide the personal data and if you do not the consequences of failure to provide the data are:

- Durham Professional Services may not be able to place you in the role we are recruiting.

## **2. Data retention**

The Company will retain your personal data only for as long as is necessary for the purpose we collect it. Different laws may also require us to keep different data for different periods of time.

The Conduct of Employment Agencies and Employment Businesses Regulations 2003, require us to keep work-seeker records for at least one year from (a) the date of their creation or (b) after the date on which we last provide you with work-finding services.

We must also keep your payroll records, holiday pay, sick pay and pensions auto-enrolment records for as long as is legally required by HMRC and associated national minimum wage, social security and tax legislation.

Where the Company has obtained your consent to process your data, we will do so in line with our retention policy. Upon expiry of that period the Company will seek further consent from you. Where consent is not granted the Company will cease to process your data.

Durham Professional Services will only retain your data for 1 year unless we receive permission from you to hold the data for longer with mutual agreement.

### 3. Your rights

Please be aware that you have the following data protection rights:

- The right to be informed about the personal data the Company processes on you;
- The right of access to the personal data the Company processes on you;
- The right to rectification of your personal data;
- The right to erasure of your personal data in certain circumstances;
- The right to restrict processing of your personal data;
- The right to data portability in certain circumstances;
- The right to object to the processing of your personal data that was based on a public or legitimate interest;
- The right not to be subjected to automated decision making and profiling; and
- The right to withdraw consent at any time.

Where you have consented to the Company processing your data you have the right to withdraw that consent at any time by contacting Gill Durham 0141 244 0246 [gill@durhamlimited.com](mailto:gill@durhamlimited.com)

There may be circumstances where the Company will still need to process your data for legal or official reasons. We will inform you if this is the case. Where this is the case, we will restrict the data to only what is necessary for the purpose of meeting those specific reasons.

If you believe that any of your data that the Company processes is incorrect or incomplete, please contact us using the details above and we will take reasonable steps to check its accuracy and correct it where necessary.

**You can also contact us using the above details if you want us to restrict the type or amount of data we process for you, access your personal data or exercise any of the other rights listed above.**

### 4. Complaints or queries

If you wish to complain about this privacy notice or any of the procedures set out in it please contact: Gill Durham 0141 244 0246 [gill@durhamlimited.com](mailto:gill@durhamlimited.com)

You also have the right to raise concerns with Information Commissioner's Office on 0303 123 1113 or at <https://ico.org.uk/concerns/>, or any other relevant supervisory authority should your personal data be processed outside of the UK, if you believe that your data protection rights have not been adhered to.

**Annex A****a) The lawfulness of *processing* conditions for *personal data* are:**

1. *Consent* of the individual for one or more specific purposes.
2. *Processing* is necessary for the performance of a contract with the individual or in order to take steps at the request of the individual to enter into a contract.
3. *Processing* is necessary for compliance with a legal obligation that the controller is subject to.
4. *Processing* is necessary to protect the vital interests of the individual or another person.
5. *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 *data controller*.
6. *Processing* is necessary for the purposes of legitimate interests pursued by the controller or a third party, except where such interests are overridden by the interests or fundamental rights or freedoms of the individual which require protection of *personal data*, in particular where the individual is a child.

**b) The lawfulness of *processing* conditions for *sensitive personal data* are:**

1. Explicit *consent* of the individual for one or more specified purposes, unless reliance on *consent* is prohibited by EU or Member State law.
2. *Processing* is necessary for carrying out data controller's obligations under employment, social security or social protection law, or a collective agreement, providing for appropriate safeguards for the fundamental rights and interests of the individual.
3. *Processing* is necessary to protect the vital interests of the individual or another individual where the individual is physically or legally incapable of giving *consent*.
4. In the course of its legitimate activities, *processing* is carried out with appropriate safeguards by a foundation, association or any other not-for-profit body, with a political, philosophical, religious or trade union aim and on condition that the *processing* relates only to members or former members (or those who have regular contact with it in connection with those purposes) and provided there is no disclosure to a third party without the *consent* of the individual.
5. *Processing* relates to *personal data* which are manifestly made public by the individual.
6. *Processing* is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity.
7. *Processing* is necessary for reasons of substantial public interest on the basis of EU or Member State law which shall be proportionate to the aim pursued, respects the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and interests of the individual.
8. *Processing* is necessary for the purposes of preventative or occupational medicine, for assessing the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of EU or Member State law or a contract with a health professional and subject to the necessary conditions and safeguards.
9. *Processing* is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of healthcare and of medicinal products or medical devices, on the basis of EU or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the individual, in particular professional secrecy.
10. *Processing* is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard fundamental rights and interests of the individual.



**Delete this Annex from the terms given to the individual**

**Annex 1B– Amendments**

Section	Related Note	Description
<b>Amendments made in May 2018 to the March 2018 version</b>		
1a.		We have included more detail on the types of processing a recruitment business might do as part of its work-finding services.
1c.	Old note 4	We have deleted the words “The Company will not process your data with any third party”. In reality recruiters will always process a work-seeker’s personal data with at least a client.
1d.	Old note 6	We have deleted the words “Your personal data is not required as part of a statutory and/or contractual requirement, and/or a requirement necessary to enter into a contract”. Recruitment businesses must collect certain personal data to meet a range of statutory obligations, for example, the Conduct of Employment Agencies and Employment Businesses Regulations 2003.
	Various	We have added more detail to a number of notes and added hyperlinks to the new ICO guidance and interactive tool.