

## 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. The focus when answering this question should be on your business objectives not the interests of your consumers.  |
| 3 | Is the processing necessary to meet one or more specific objectives of any Third Party?  |        | For this question, a Third Party is any organisation or individual with whom you may share data with for their own purposes. 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).  |
| 5 | 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.   |
| 6 | If applicable, why is the processing activity important to Third Parties the data may be disclosed to?   |        | <p>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.</p> <p>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.</p> <p>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.</p> |

## B) THE NECESSITY TEST

|   | Question  | Answer | Guidance   |
|---|---|--------|--|
| 1 | Is there an alternative way to achieve the objective without conducting this processing activity? |        | <ul style="list-style-type: none"> <li>• If there isn't an alternative, then clearly the processing is necessary; or</li> <li>• If there is an alternative but it would require disproportionate effort, then the processing may still be necessary; or</li> <li>• If there are multiple ways of achieving the objective, then a Data Protection Impact Assessment should have identified the least intrusive means of processing the data which would be necessary</li> </ul> |

### C) THE BALANCING TEST

|   | Question   | Answer | Guidance   |
|---|--|--------|--|
| 1 | Would the individual expect the processing activity to take place?                               |        | If the individual would not expect the processing to take place, this could in particular override the Controller's interests. Consider the expectations of the individual, would this processing activity be within their reasonable expectations? Have they been informed? Consider including here any evidence you may have of their expectations that this processing would occur? |
| 2 | Does the processing add value to a product or service that the individual uses?                  |        | If the processing adds value for the individual this may strengthen the case for Legitimate Interest.  |
| 3 | Is the processing likely to negatively impact the individual's interests and/or rights?          |        | Consider here whether the processing could lead to discrimination, financial loss, reputational damage, loss of confidentiality or professional secrecy. Or any other economic or social disadvantage. (Please note this is not an exhaustive list). Does the processing prevent data subjects exercising control over their personal data? (See GDPR Recital 75).                     |
| 4 | 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.  |
| 5 | Is the processing likely to result in unwarranted harm or distress to the individual?            |        |  |
| 6 | Would unwarranted harm or distress to the individual occur if the processing did not take place? |        |  |
| 7 | Would there be a prejudice to Data Controller if processing does not happen?                     |        | Would there be a negative organisational or commercial impact on the data controller if this processing were not to take place?  |
| 8 | If applicable, would there be a prejudice to the Third Party if processing does not happen?      |        | Would there be a negative organisational or commercial impact on a Third Party if this processing were not to take place?  |
| 9 | Is the processing in the interests of the individual whose personal data it relates to?          |        | Focus your response on the customer and any potential benefits of this processing.   |

| C) THE BALANCING TEST |   |        |   |
|-----------------------|---|--------|---|
|                       | Question  | Answer | Guidance  |
| 10                    | Are the interests of the individual aligned with the party looking to rely on their legitimate interests for the processing?  |        | <p>What are the benefits to the individual or to society?</p> <p>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.</p>  |
| 11                    | What is the connection between the individual and the organisation?   |        | <p>Identify the connection:</p> <ul style="list-style-type: none"> <li>• Existing customer</li> <li>• Lapsed/cancelled customer</li> <li>• Employee or contractor</li> <li>• Business client</li> <li>• Prospect (never purchased goods or services)</li> <li>• Supplier</li> <li>• None of above</li> </ul>  |
| 12                    | What is the nature of the data to be processed? Does data of this nature have any special protections under GDPR?   |        | <p>What types of personal data are being processed e.g. contact data, financial details etc.? Is it data relating to a child? If processing Special Categories of Personal Data, an Article 9 condition must be identified in addition to a lawful basis under Article 6.</p>   |
| 13                    | 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? |        | <p>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.</p> <p>Consider the nature of the relationship, is it:</p> <ul style="list-style-type: none"> <li>• Ongoing</li> <li>• Periodic</li> <li>• One-off</li> <li>• No relationship, or relationship has effectively ceased</li> </ul>   |
| 14                    | Has the personal information been obtained directly from the individual, or obtained indirectly?  |        | <p>Consider whether personal information has been collected:</p> <ul style="list-style-type: none"> <li>• Directly</li> <li>• Indirectly</li> <li>• A mix of both</li> </ul> <p>If the information was obtained directly from the individual then you should take due consideration of the Fair Processing 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 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.</p> |

| C) THE BALANCING TEST |  |        |  |
|-----------------------|--|--------|--|
|                       | Question   | Answer | Guidance   |
| 15                    | Is there any imbalance in who holds the power between the organisation and the individual?   |        | If the organisation has a dominant position, this places more responsibility on the Controller to ensure that the interests and rights of the individual are protected. The Controller will need to consider how it addresses any imbalance of power to ensure individuals' rights are not impacted.   |
| 16                    | Is it likely that the individual may expect their information to be used for this purpose?   |        | <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Not sure</li> </ul> <p>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.</p>   |
| 17                    | 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 unduly intrusive - 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).                    |
| 18                    | 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.  |
| 19                    | Can the individual, whose data is being processed, control the processing activity or object to it easily?   |        | <ul style="list-style-type: none"> <li>• Yes (cover how you do this in the next section on "Mitigation and Compensating Controls")</li> <li>• No</li> <li>• Partly</li> </ul> <p>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.</p>  |
| 20                    | Can the scope of the processing be modified to reduce/mitigate any underlying privacy risks or harms?  |        | <p>If yes (cover how you intend to do this in the next section "Mitigation and Compensating Controls")</p> <p>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.</p> |

## D) SAFEGUARDS AND COMPENSATING CONTROLS

|   | Question                                     | Answer | Guidance   |
|---|--|--------|--|
|   |  |        | <p><b>Safeguards</b> 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.</p> <p>Please include a description of any compensating controls that are already in place, or will be put in place, to preserve the rights of the individual.</p> |
| 1 | What existing safeguards are in place?       |        |  |
| 2 | Will any further safeguards be put in place? |        |  |

## E) REACHING A DECISION AND DOCUMENTING THE OUTCOME

| Outcome of Assessment: | Guidance   |
|------------------------|--|
|                        | 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 questionnaire. |
| <b>Signed by:</b>      | <b>Role:</b>   |
| <b>Dated::</b>         |  |
| <b>Review date:</b>    |  |