

DIRECTORS, SHAREHOLDERS AND OWNERS OF INSOLVENT BUSINESSES PRIVACY NOTICE [Sept 2018]

This document sets out in detail the policy of Wilkins Kennedy, Restructuring and Recovery (“the Practice”) on the protection of information relating to directors, shareholders and owners of insolvent businesses (“Corporate Clients”). Protecting the confidentiality and integrity of personal data is a critical responsibility that the Practice takes seriously at all times. The Practice will ensure that data is always processed fairly, in accordance with the provisions of relevant data protection legislation, including the General Data Protection Regulation (GDPR) and Data Protection Act 2018.

KEY DEFINITIONS

Data processing

Data processing is any activity that involves the use of personal data. It includes obtaining, recording or holding information, or carrying out any operation or set of operations, including organising, amending, retrieving, using, disclosing, erasing or destroying it. Processing also includes transmitting or transferring personal data to third parties.

Personal data

Personal data is any information by which a living person to whom the data relates can be identified. Personal data can be factual (for example, a name, email address, location or date of birth) or an opinion about that person’s actions or behaviour, such as a disciplinary record. There are also “special categories” of more sensitive personal data which require a higher level of protection.

The Practice necessarily collects personal data about its Corporate Clients and this Privacy Notice explains how we treat that personal data and your rights in relation to it.

PRIVACY NOTICE

This document is the Practice’s Directors, Shareholders and Owners of Insolvent Businesses Privacy Notice, it explains your rights in detail. This notice sets out the information the Practice holds about Corporate Clients, the purpose for which this data is held and the lawful basis on which it is held. The Practice may process personal information without the client’s knowledge or consent, in compliance with this policy, where this is required or permitted by law.

The Directors, Shareholders and Owners of Insolvent Businesses Privacy Notice will be made available within our first communication with the Corporate Client. If the purpose for processing any piece of data about the Corporate Client should change, the Practice will update the Directors, Shareholders and Owners of Insolvent Businesses Privacy Notice with the new purpose(s) and the lawful basis for processing the data and will notify the Client by email.

FAIR PROCESSING PRINCIPLES

In processing Corporate Clients’ personal data, the following principles will be adhered to. Personal data will be:

- Used lawfully, fairly and in a transparent way;
- Collected only for valid purposes that are clearly explained and not used in any way that is incompatible with those purposes;
- Relevant to specific purposes and limited only to those purposes;

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- Accurate and kept up to date;
- Kept only as long as necessary for the specified purposes; and
- Kept securely.

COLLECTION AND RETENTION OF DATA

How is your personal information collected?

The Practice will collect personal information about Corporate Clients through the advice process, directly from Corporate Clients themselves, and also through accessing publicly available information, such as that held at Companies House. We will be the Data Controller of the information that we collect in this way and are responsible for its security and privacy.

Where we are asked to provide restructuring advice to a business, we will necessarily take steps to identify the owners and controllers of that business, in accordance with the Anti Money Laundering legislation. This process may take place without the knowledge or consent of those persons, where the instructions are received from those with management responsibility for the business's operations (typically the directors of the business that approach us for the initial advice).

When appointed as an insolvency Office Holder in respect of an insolvent business, the Office Holder will also have access to the information contained in the business's books and records, though in respect of this information, the Office Holder will not generally be a Data Controller of it, but will be acting as agent on behalf of the business. We may however be subject to a duty of confidentiality in respect of this information.

Additionally, in a formal insolvency process, information may be provided to us by the Official Receiver (in England, Wales and Northern Ireland), Accountant in Bankruptcy (in Scotland), and in all cases from the creditors, debtors and employees of the insolvent business, and/or other stakeholders in the insolvency process that make such information available to us in the course of administering the affairs of the insolvent business.

From time to time, the Practice may collect additional personal information in the course of its investigations into a Corporate Client's business affairs. These investigations may involve contacting third parties that are known or suspected to have had business or financial dealings with the Corporate Client, where we consider that the information they may provide could assist us to properly administer the affairs of the insolvent business.

What information is collected about you?

We may collect, store, and use the following categories of personal information about you:

- Personal contact details such as name, title, addresses, telephone numbers, and personal email addresses;
- Date of birth;
- Gender;
- Marital status, co-habitees/co-occupants and dependents;
- National Insurance number;
- Occupation and function within the insolvent business;
- Bank account details, payroll records and tax status information;
- Location of employment or workplace;
- Salary/wage details;
- Pension arrangements and benefits;
- Details of any vehicle provided to you by the insolvent business;

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- Details of any other valuable property (assets) that you have acquired from the insolvent business;
- Amounts of any bonuses, dividends or other financial benefits received by you from the insolvent business;
- Photo ID produced to confirm your identity;
- Details of any personal guarantees or indemnities you may have given in respect of the insolvent business's liabilities
- Any explanation you provide of the reasons for your business's insolvency;
- Details of any proposed role or function you may undertake in respect of a successor business;

In limited circumstances, we may also collect, store and use the following "special categories" of more sensitive personal information:

- Information about your race or ethnicity, religious beliefs, sexual orientation and political opinions (where you volunteer this information, though we will not ask you for it);
- Trade union membership (where you volunteer this information, though we will not ask you for it);
- Information about your health, including any medical condition, health and sickness records, particularly as it may impact on the manner in which we administer the affairs of the insolvent business (in accordance with our *Vulnerable Customers Policy*);
- Information about criminal convictions and offences where these may be relevant to our investigations into the assets or liabilities of the insolvent business or the circumstances leading up to its insolvency;

How is information about you used?

Personal information will only be processed when there is a lawful basis for doing so. Most commonly, the Practice will use personal information in the following circumstances:

- to provide you with advice about possible restructuring solutions for your insolvent business;
- to fulfil the legal obligations placed upon an insolvency Office Holder in administering the affairs of the insolvent business;
- in connection with legal proceedings (either the insolvency proceeding themselves, such as Liquidation, Administration or Company Voluntary Arrangement, or proceedings related to a formal insolvency, such as the recovery of an asset from a third party);

The Practice may also use personal information in the following situations, which are likely to be less common:

- when it is necessary to protect your interests, if you are identified as being subject to a vulnerability (in accordance with our *Vulnerable Clients Policy*);
- when it is necessary to protect someone else's interests (for instance, if you have or have been alleged to have acted in a violent or abusive manner toward our staff); or
- when it is necessary in the public interest or for official purposes as an Insolvency Office Holder (such as in connection with any corporate governance offences that have or are alleged to have been committed).

The situations in which we envisage using your personal information are as follows:

- To formulate any recommendations we may provide about the recovery solutions which may be available to your business;

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- Making a decision about the amount you may owe to or be owed by the insolvent business;
- Making decisions about what assets you may be required to return to the insolvent business;
- Selling or otherwise disposing of the assets of the insolvent business;
- When reporting periodically to the people the insolvent business owes money to;
- Liaising with any persons that have or may have had dealings with you which are relevant to the administration of the affairs of the insolvent business;
- Gathering evidence for possible legal proceedings;
- Reporting upon your conduct in relation to the insolvent business, as required by the Company Directors Disqualification Act 1986;
- To prevent fraud, money laundering or terrorist financing;
- Any other purpose as may be required by relevant legislation in connection with your insolvency and the administration of your estate.

If you fail to provide personal information

If you fail to provide certain information when requested, we may take steps to compel you to provide it in Court and/or to acquire the information we need to properly administer the affairs of the insolvent business from third parties.

Change of purpose

Information provided by you or collected from third parties will only be used for which the reason we collected it, unless we reasonably consider that we need to use it for another reason and that reason is compatible with the original purpose.

Please note that we may process your personal information without your knowledge or consent, in compliance with the above rules, where this is required or permitted by law.

Special categories (sensitive) personal data

Some categories of personal data are considered by law to be particularly sensitive and are therefore classed as “special categories” of personal data. These relate to a person’s racial or ethnic origin, political opinions, religious or similar beliefs, trade union membership, physical or mental health conditions, sexual life, sexual orientation, biometric or genetic data. This type of data is afforded additional protection.

There are a number of situations where we might possess special categories of data about you:

- When advising you about the suitability of a possible recovery solution, you will be invited to provide us with any special category information that you would like to be taken into account by us in providing you with our advice. In particular, you may wish to provide us with information about any health, social or other personal issue that has had an impact upon your ability to continue to manage a business or to repay money that you own to an insolvent business, or under a guarantee or indemnity in respect of that business’s debts. Such information is provided voluntarily by you and with your explicit consent. This information is only disclosed to third parties with your express permission and your consent to our holding or using this information can be withdrawn at any time.
- When you want the people that the insolvent business owes money to, to take your personal circumstances into account when deciding upon a restructuring proposal you wish to put to them, you may be asked if you would like to consent to the disclosure of

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special category information to them. In these circumstances, your express permission to making this disclosure may be sought, which you may wish to refuse.

- When we are administering the affairs of an insolvent business (in Liquidation, Administration, Administrative Receivership, Receivership or Company Voluntary Arrangement), we may need to assess whether you are subject to a particular circumstance, vulnerability (including a lack of mental capacity) or any other special factor which should be taken into account by us when making decisions about how we administer the affairs of the insolvent business. This information may have been provided by you directly, or may have been brought to our attention by a third party (such as the Accountant in Bankruptcy, Official Receiver, a relative or family member, or someone the business owes money to). Depending upon the nature of the information we receive, we may not need your consent to have or use this information, where it is relevant to the performance of our functions as an insolvency Office Holder.
- We may possess special category information where it is needed in relation to legal claims or proceedings relating to the affairs of the insolvent business. Depending upon the nature of the information we receive, we may not need your consent to have this information.
- When such information is needed in the public interest, such as where you lack the mental capacity to deal with the affairs of the insolvent business/or where a lasting power of attorney has been provided to another person in respect of your affairs, we do not require your consent to have this information;

Information about criminal convictions

The Practice envisages that it may hold information about criminal convictions where these are relevant to the causes of failure of the insolvent business or the performance of the functions of an insolvency Office Holder. If it becomes necessary to do so, the Practice will only use this information where it has a legal basis for processing the information. This will usually be where such processing is necessary to carry out the role and function of an insolvency Office Holder.

The Practice may also use information relating to criminal convictions where:

- it is necessary in relation to legal claims;
- it is necessary to protect your vital interests (or someone else's vital interests) and you are not capable of giving consent;
- Where it is relevant to the statutory reporting obligations of an insolvency Office Holder;
- you have already made the information public or the information is otherwise in the public domain.

The Practice will only collect information about criminal convictions if it is appropriate given the nature of the role of a restructuring advisor or insolvency Office Holders. Relevant convictions would typically be those relating to theft, fraud or dishonesty, money laundering or terrorist financing.

How long is information about you kept?

The Practice will only retain Client's personal information for as long as necessary to fulfil the purposes it was collected it for, including for the purposes of satisfying any legal, regulatory, accounting, or reporting requirements. In most insolvency matters, there is a statutory retention period of 6 years from the conclusion of the administration.

When determining the appropriate retention period for personal data that is not fixed by statute, the Practice will consider the amount, nature, and sensitivity of the personal data, the potential risk of harm from unauthorised use or disclosure of personal data, the purposes for which the personal data is processed, whether the Practice can achieve those purposes through other means, and the applicable legal requirements.

Consent to data processing

The Practice requires your consent to process your data when you approach us for advice about restructuring solutions. In all other circumstances, the Practice does not require consent from Corporate Clients to process most types of personal data, as there will either be a contractual requirement upon us (once you have appointed us to advise you) or where we are administering a formal insolvency, we will be performing the statutory function of an insolvency Office Holder.

The Practice will not usually need consent to use special categories of personal data or information about criminal convictions in order to carry out legal obligations or exercise specific rights in the field of insolvency administration.

In limited circumstances, for example where you are asking the people to whom the insolvent business owes money to take your personal circumstances into account, you may be asked for written consent to process sensitive data. In those circumstances, Corporate Clients will be provided with full details of the information sought and the reason it is needed, so that you can carefully consider whether to consent. It is not a condition of us providing you with restructuring advice or insolvency services that you agree to any request for consent.

Where Corporate Clients have provided consent to the collection, processing and transfer of personal information for a specific purpose, they have the right to withdraw future consent for that specific processing at any time (although a consent to a prior disclosure cannot be withdrawn once the disclosure has been made). Once the Practice has received notification of withdrawal of consent it will no longer process information for the purpose or purposes originally agreed to, unless it has another legitimate basis for doing so in law.

Automated decision making

Automated decision making takes place when an electronic system uses personal information to make a decision without human intervention. The Practice does not envisage that any decisions will be taken about Corporate Clients using automated means, however they will be notified if this position changes.

DATA SECURITY AND SHARING

Data security

The Practice has put in place appropriate security measures to prevent personal information from being accidentally lost, used or accessed in an unauthorised way, altered or disclosed. Details of these measures are contained in our Confidentiality and Data Security Policy.

In summary, access to personal information is limited to those staff members, agents, contractors and other third parties who have a business need to know. They will only process personal information on the Practice's instructions and are subject to a duty of confidentiality. The Practice expects staff members handling personal data to take steps to safeguard personal data of Corporate Clients in line with this and the Confidentiality and Data Security Policy.

Data sharing

The Practice requires third parties to respect the security of personal data and to treat it in accordance with the law. Personal data about Corporate Clients will only be shared if it is lawful and necessary.

The Practice may share Client's data with third-party service providers where it is necessary to administer an insolvent estate, in connection with legal claims or where the Practice has another legitimate interest in doing so (subject at all times to Client confidentiality).

The following activities are commonly carried out by third-party service providers:

- Legal advice
- Debt collection
- Valuation services
- Asset uplift and sale at public auction
- Securing trading premises
- Specialist industry support (e.g. veterinary services/quantity surveying services)

Occasionally, we may share your personal information with other third parties, for example in the context of the possible sale or restructuring of the business. We may also need to share your personal information with a regulator or to otherwise comply with the law.

Where will processing be performed?

The Practice's own servers are based in the UK. The data may be transferred to, or stored at, a destination outside the European Economic Area (EEA). It may be processed outside the EEA by staff outside the EEA or by one of our suppliers.

Where we transfer personal data outside the EEA, we will take reasonable steps to ensure your data is treated securely.

Where we transfer personal data to a country not determined by the European Commission as providing adequate levels of protection for personal data, the transfer will be under an agreement which covers the EU requirements for transfers of personal data outside the EU.

CORPORATE CLIENT'S RIGHTS

Accuracy of data

The Practice will conduct regular reviews of the information held by it to ensure the relevancy of the information it holds. Corporate Clients should inform the Practice of any changes to their current circumstances. Where a Corporate Client has concerns regarding the accuracy of personal data held by the Practice, they should contact their Case Administrator to request an amendment to the data.

Your rights

Under certain circumstances, Corporate Clients have the right to:

- **Request access** to personal information (commonly known as a "subject access request").
- **Request erasure** of personal information.
- **Object to processing** of personal information where the Practice is relying on a legitimate interest (or those of a third party) to lawfully process it.
- **Request the restriction of processing** of personal information.
- **Request the transfer** of personal information to another party.

If a Corporate Client wishes to make a request on any of the above grounds, they should contact their Case Administrator, in writing (email is acceptable for this purpose). You will usually be entitled to know what personal information we hold about you.

Please note that, depending on the nature of the request, the Practice may have good grounds for refusing to comply. If that is the case, you will be given an explanation by the Practice.

- **Advice Clients:** If we have provided you with advice about restructuring options, you will have a number of rights available to you, which may include access, restriction or transfer and to a lesser degree, erasure.
- **Insolvency Clients:** Where we are administering the insolvency of a business (in Liquidation, Administration, Administrative Receivership, Receivership or Company Voluntary Arrangement), there are certain periods that the law requires us to maintain information about the case (typically 6 years from the conclusion of the administration). Full details of relevant retention periods are listed in our Data Processing Register. In insolvency cases, we are unlikely to be able to agree to a request to erase, restrict or transfer your information, but will explain this to you in further detail should such a request be made.
- **Legal Claims:** Where legal claims are involved, we may not be able to provide you with access to all of the information we hold, as some of it will be subject to legal professional privilege.

Accessing the information we hold

Corporate Clients will not normally have to pay a fee to access personal information (or to exercise any of the other rights). However, the Practice may charge a reasonable fee if the request for access is clearly unfounded or excessive. Alternatively, the Practice may refuse to comply with the request in such circumstances.

The Practice may need to request specific information from the Corporate Client to help confirm their identity and ensure the right to access the information (or to exercise any of the other rights). This is another appropriate security measure to ensure that personal information is not disclosed to any person who has no right to receive it.

COMPLIANCE WITH DATA PROTECTION

The Practice's responsibility for compliance

The Practice has appointed a Data Protection Officer (DPO), who may be contacted at DPO@baldwinandco.co.uk or by writing to the Data Protection Officer, Churchill House, 59 Lichfield Street, Walsall, West Midlands, WS4 2BX.

In insolvency cases, ultimate responsibility rests with the named Licensed Insolvency Practitioner that has been appointed in respect of an insolvent entity's affairs. If Clients have any questions about this policy or how the Practice handles personal information, they should contact the DPO at first instance. If they are dissatisfied with the response they receive (or no response is received), Clients should contact the Licensed Insolvency Practitioner appointed in respect of the case.

Corporate Clients have the right to make a complaint at any time to the Information Commissioner's Office (ICO), the UK supervisory authority for data protection issues.

Data security breaches

The Practice has put in place procedures to deal with any data security breach and will notify Corporate Clients and any applicable regulator of a suspected breach where legally required to do so.

In certain circumstances, the Practice will be required to notify regulators of a data security breach within 72 hours of the breach.

If Clients have any concerns about the security of the personal data we hold about them, or suspect that a data breach has occurred, they should contact the DPO at first instance. If they are dissatisfied with the response they receive (or no response is received), Corporate Clients should contact the Licensed Insolvency Practitioner appointed in respect of the case.

Privacy by design

The Practice will have regard to the principles of this policy and relevant legislation when designing or implementing new systems or processes (known as "privacy by design"). The importance of data privacy has already been reflected and incorporated into all of our policies, processes and notices, including those in respect of:

- Confidentiality and Data Security Policy
- Data Breach Policy
- Data Retention and Destruction Policy
- Data Subject Access Policy
- Data Protection in Formal Appointments Policy
- Privacy Notices
- Special Category Data Policy
- Supplier Oversight Policy
- Vulnerable Customers Policy

CHANGES TO THIS PRIVACY NOTICE

The Practice reserves the right to update this privacy notice at any time, and we will provide you with access to a new privacy notice when we make any substantial updates.