

# DATA PROTECTION BILL [HL] 2017-19

## CURTIS BANKS GROUP PLC

MARCH 2018 | RENATA CHESTER | DATA PROTECTION OFFICER - CURTIS BANKS GROUP PLC

*Further to the update issued via the Parliament website on 6<sup>th</sup> March 2018, the Curtis Banks Group Plc (CBG) wishes to submit written evidence to the House of Commons Public Bill Committee regarding the Data Protection Bill (HL) 2017-19.*

### Background To The Curtis Banks Group Plc

The Curtis Banks Group Plc (CBG) is one of the United Kingdom's leading administrators of self-invested pension products, principally SIPPs (Self-Invested Personal Pensions) and SSAs (Small Self-Administered Schemes).

The Group commenced trading in 2009 and has successfully developed into one of the largest UK providers of these products. In May 2015 the shares of CBG were admitted and listed on the London Alternative Investment Market (AIM).

The Group employs approximately 570 staff in its head office in Bristol and regional offices in Ipswich and Dundee. Curtis Banks Limited and Suffolk Life Pensions Limited, the Group's principal trading subsidiaries, are authorised by the Financial Conduct Authority to provide trust based SIPP products. Suffolk Life Annuities Limited (a subsidiary of the Group) is regulated by the Prudential Regulatory Authority and the Financial Conduct Authority to provide insurance based SIPP Products. As at 30 June 2017 the Group had almost 75,000 SIPP clients, as well as 329 SSAS clients, with assets under administration of circa £23 billion.

### Recommendation

Pension arrangements in the UK fall into two categories:

#### Defined benefit schemes

These are also sometimes known as final salary schemes. These are occupational pension schemes where pension benefits are determined by a member's length of service and final salary.

#### Defined contribution schemes

These can be either:

- a) Occupational pension schemes, or
- b) Personal pension schemes

# DATA PROTECTION BILL [HL] 2017-19

Under defined contribution schemes, the pension benefits of the member are linked only to the value of the pension fund - comprising of pension contributions and investment return of assets - when benefits are taken.

Furthermore, personal pensions are sub-divided into insurance contracts and trust-based schemes. Most self-invested personal pensions (SIPPs) are established under trust.

Irrespective of the structure of the personal pension (insurance contract or trust) the schemes operate in the same way and are subject to the same regulatory requirements from the Financial Conduct Authority (FCA) and HM Revenue & Customs (HMRC).

Personal pension Schemes are defined in Section 1 of Pensions Act 1993 as:

*“... any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect so as to provide benefits, in the form of pensions or otherwise, payable on death or retirement to or in respect of employed earners who have made arrangements with the trustees or managers of the scheme for them to become members of it;”*

As with all occupational pension schemes and personal pension schemes written under an insurance contract, trust-based personal pensions process a small number of items, under the legitimate interest lawful basis of processing which would be deemed Special Category Data under the General Data Protection Regulation (GDPR). Consent to process special category data would primarily be given in writing but may also be given verbally.

Similarly there may be cases arising where a trust-based personal pension scheme provider comes into possession of Special Category Data that has not been provided directly from the data subject. An example of this would be if the group obtained details of a nominated death beneficiary. In providing these details, a trust-based personal pension scheme provider would potentially become aware of the sexual orientation of the third party beneficiary. In the case of a nominated death beneficiary, this is necessary “ ... for the purpose of making a determination in connection with eligibility for, or benefits payable...”.

The Data Protection Bill [HL] 2017 - 19 as drafted provides an exemption in relation to special category data under substantial public interest conditions (Schedule 1 Part 2).

This exemption is available for insurance contracts - Schedule 1 part 2 paragraph 15 - which would cover all pension schemes established as insurance contracts.

Schedule 1, Part 2 paragraph 16 also provides an exemption for all occupational pension schemes as follows:

## *Occupational Pensions*

- (1) This condition is met if the processing—*
  - a. Is necessary for the purpose of making a determination in connection with eligibility for, or benefits payable under, an occupational pension scheme,*
  - b. Is not carried out for the purposes of measures or decisions with respect to the data subject, and*
  - c. Can reasonably be carried out without the consent of the data subject.*
- (2) For the purposes of sub-paragraph (1)(c), processing can reasonably be carried out without the consent of the data subject only where—*

# DATA PROTECTION BILL [HL] 2017-19

- a. *The controller cannot reasonably be expected to obtain the consent of the data subject, and*
  - b. *The controller is not aware of the data subject withholding consent.*
- (3) *In this paragraph—*
- a. *“occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993;*
  - b. *“member”, in relation to a scheme, includes an individual who is seeking to become a member of the scheme.*

Our recommendation is that this exemption is extended to include personal pensions as exactly the same provisions and requirements apply. This will also cover all personal pension structures. It is recommended that paragraph 16 is redrafted as follows:

## *Occupational **and Personal** Pensions*

- (2) This condition is met if the processing—
- c. *Is necessary for the purpose of making a determination in connection with eligibility for, or benefits payable under, an occupational pension scheme **or personal pension scheme**,*
  - d. *Is not carried out for the purposes of measures or decisions with respect to the data subject, and*
  - e. *Can reasonably be carried out without the consent of the data subject.*
- (4) For the purposes of sub-paragraph (1)(c), processing can reasonably be carried out without the consent of the data subject only where—
- a. *The controller cannot reasonably be expected to obtain the consent of the data subject, and*
  - b. *The controller is not aware of the data subject withholding consent.*
- (5) In this paragraph—
- a. *“occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993;*
  - b. *“personal pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993;*
  - c. *“member”, in relation to a scheme, includes an individual who is seeking to become a member of the scheme.*