



GDPR: The Great Data Puzzle

What do the changes mean for landlords?





Disclaimer

Any information contained in this presentation does not constitute advice, you should seek legal advice via your solicitor if you are unsure about any legal process. The privacy policy & consent form contained in this presentation are an example only and have **NOT** been checked by a solicitor. The National Landlord Association can provide template documents which you should use.



How is data handling changing?

General Data Protection Regulation (GDPR) – the biggest change to data handling that UK organisations have seen since the introduction of the current Data Protection Act - is being introduced on May 24th 2018 (Law from May 25th) and will impact all of us.

Although a EU regulation, the rules will not change when the UK exits Europe – the regulations are **'Brexit-Proof'**

Many of the principles of GDPR are the same of the DPA. The regulation's principles aim to ensure that an individual has:

- **The right to be informed:** Allowing individuals to know that their data is being stored
- **The right of access:** Allowing individuals to access their data so that they can verify the lawfulness of the processing
- **The right to rectification:** Allowing individuals to change/amend their data if it is incorrect/incomplete
- **The right to erasure:** 'The right to be forgotten' Total wipe out of their data from your systems
- **The right to restrict processing:** Allowing individuals to put a block on their data being used at all
- **The right to data portability:** To obtain and reuse their own data for their own purposes across different services
- **The right to object:** Can say no to their data being used for marketing or processing
- **The right not to be subject to automated decision-making including profiling:** Can say no to their data being subject to analysis without 'human intervention'



What if I don't comply?

The GDPR will introduce larger penalties for data breaches than are currently in place for breaching the Data Protection Act (currently £500,000 maximum), with fines of up to **4% of annual worldwide turnover or €20 million** being possible.

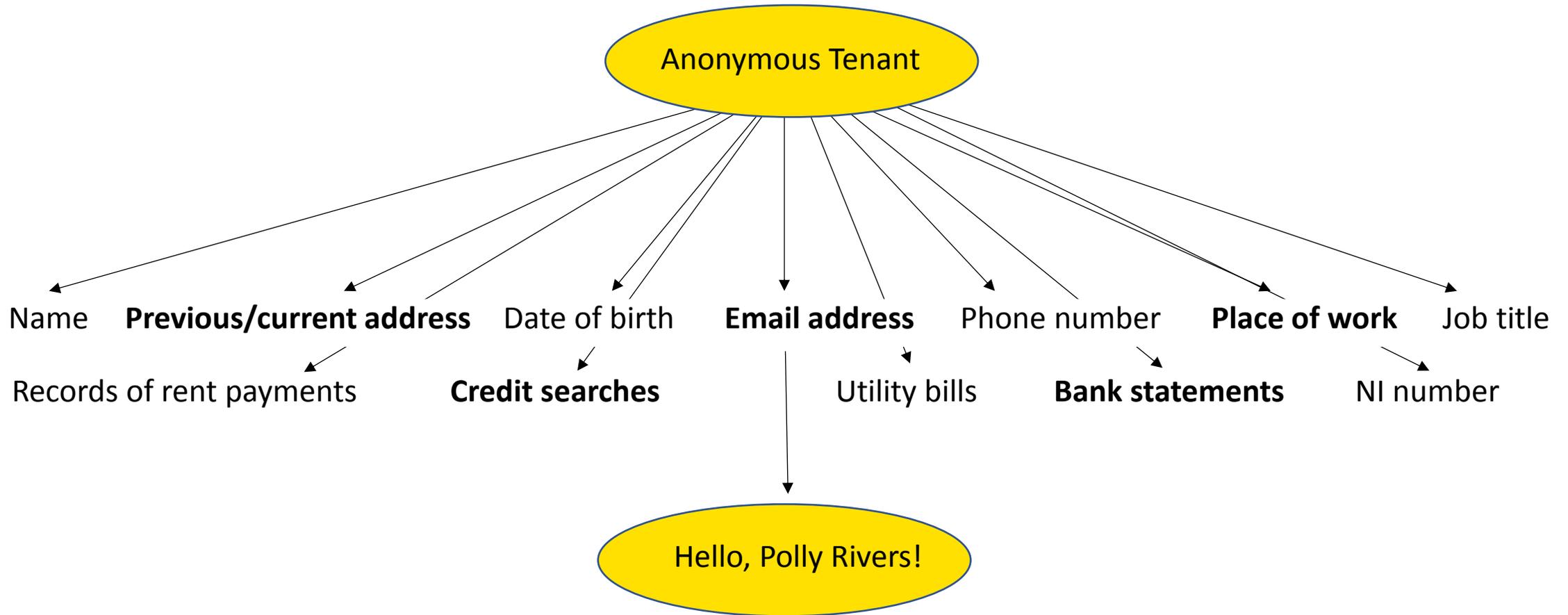
Whilst it is unlikely that an individual landlord would be handed or €20 million fine (the largest ever fine levied under the current DPA was £400,000) penalties will be handed out by the Information Commissioners Office (ICO) who they have a DUTY to impose a penalty – this is not being taken lightly.

If your tenant is subject to a data breach and it is considered that your mishandling of their data has played a part, they are also able to pursue you for damages. Depending on the impact the breach has had on them, these costs could be significant.



What exactly qualifies as data?

Anything that could identify your tenant.





Six methods for processing - Consent

Consent to collect and process an individual's data must be properly documented, and easily withdrawn: either provided by a statement or by a clear affirmative action (such as a clear Yes/No tick box). **Silence or inactivity**

DOESN'T MEAN CONSENT. You can gain consent a number of ways:

- **Signing a consent statement on a paper form**
- **Ticking an opt-in box on paper or electronically**
- **Clicking an opt-in button or link online**
- **Selecting from equally prominent yes/no options**
- **Responding to an email requesting consent (Building a paper trail via email is a great idea wherever possible!)**
- **Answering yes to a clear oral consent request**
- **Dropping a business card into a box**



Six methods for processing

Whilst consent is the method we recommend, there are five other lawful basis that you may choose to use:

Contract

The ICO website states that this basis can be relied upon to process someone's personal data to fulfil your contractual obligations to them or because they have asked you to do something before entering into a contract.

The processing must be necessary to deliver your side of the contract with this particular person. If you could carry out proceedings without processing their personal data, this basis will not apply. If the processing is only necessary to maintain your business model generally, this lawful basis will not apply.

Legal obligation

The ICO website states that this basis can be relied upon if you are reliant on processing the data in order to comply with **common law or statutory obligation**. However, this does not apply to contractual obligations.

The processing must be necessary. If you can reasonably comply without processing the personal data, this basis does not apply. You should document your decision to rely on this lawful basis, and be able to either identify the specific legal provision or an appropriate source of advice or guidance that clearly sets out your obligation, and ensure that you can justify your reasoning.



Six methods for processing

Legitimate Interest

The ICO website states that this is the most flexible basis for processing, but not always the most appropriate. If you choose to rely on legitimate interest, you are taking on **extra responsibility** for considering and protecting people's rights and interests.

Legitimate interest is likely to be most appropriate where you use people's data in ways they would reasonably expect, and which have a minimal privacy impact, or where there is a compelling justification for the processing.

There are three elements to the legitimate interests basis. It helps to think of this as a three-part test. You need to:

- identify a legitimate interest;
- show that the processing is necessary to achieve it; and
- balance it against the individual's interests, rights and freedoms.

You must balance your interests against the individual's. If they would not reasonably expect the processing, or if it would cause unjustified harm, their interests are likely to override your legitimate interests.

Keep a record of your legitimate interests assessment (LIA) to help you demonstrate compliance if required and make sure to include details of your legitimate interests in your privacy notice.



Six methods for processing

Vital interests

The ICO website states that this basis can be relied upon to if you need to process the personal data to **protect someone's life**, and you must be able to justify your reasons for this choice

Public Task

The ICO website states that this basis can be relied upon to if you need to process personal data:

- 'in the exercise of official authority'. This covers public functions and powers that are set out in law; or
- to perform a specific task in the public interest that is set out in law.

Your underlying task, function or power must have a clear basis in law, and if you could reasonably perform your tasks or exercise your powers in a less intrusive way, this lawful basis does not apply. It is most relevant to public authorities, but it can apply to any organisation that exercises official authority or carries out tasks in the public interest. **This is unlikely to apply to many individual landlords.**



How does it change things for me?

A **data controller** is an individual (or an organisation) who decides how personal data is processed.

Data protection obligations primarily fall upon the **data controller** – it's your job to keep your tenant's data safe. Initially, as a **data controller**, you decide:

- **To collect the personal data in the first place**
- **The legal basis for data collection**
- **Which items of personal data to collect (what you need to know!)**
- **What you're planning on using the personal data for**
- **Whose data you need**
- **Whether to pass the data onto a Processor, which Processor, and whether they have an data handling process**
- **How long you will keep the data** – this could change depending on whether you have a formal legal contract in place with the individual or not. Keeping data for 6 years is acceptable after the end of a formal legal contract (such as a tenancy agreement), but if there is no formal contract in place, it should be deleted immediately.
- **Whether to make any amendments to the data**



How does it change things for me (pt 2)?

As a data controller, you also have to keep an eye on any **Data Processors** that you engage with.

A **Data Processor** is any of the organisations you ask to handle data on your behalf– your referencing agency or your agent, for example. Under GDPR they have responsibilities for:

- **Appropriate collection of data**
- **Appropriate editing of data**
- **Retaining/storing in line with GDPR guidelines**
- **Disclosing (or sharing) data in line with GDPR guidelines (how secure: password protected, cloud systems etc)**
- **The correct deletion/erasing/destroying of data**
- **The proper viewing (e.g. looking at someone's personal data, which could include their image, on screen or on paper) of data in line with GDPR guidelines**
- **Appropriate archiving of data**

As a **Data Controller** it is your responsibility to ensure that any **Data Processor** that you engage with is managing your tenant's data correctly, and complying with the guidelines.



Obtaining new data

However you choose to get your tenant's consent, make sure that the method includes clear details on the followings:

- **Your name/the name of your organisation and the names of any third parties who will rely on the consent – consent for categories of third-party organisations (referencing/maintenance etc) isn't enough**
- **Why you want their data**
- **What you will do with their data**
- **How they can withdraw their consent for it to be processed (passed on)**



Information you already hold

Auditing the data that you already hold is a great idea, and getting it prepared for the introduction of GDPR in May will put you in good stead. An information audit will help you get your files prepared, and give you an overview. You should understand:

- **What personal data do you hold?**
- **Where did it come from?**
- **Who have you shared it with?**
- **Is it all still accurate?**
- **How you would delete that data if required?**

If you do not have consent to use your existing tenant's data, you should gain their consent in line with the consent process. You should serve your existing (and new) tenants with a **Privacy Notice**, which will give them details about how their data is used, stored and deleted, and how to contact you with regards to opting out of processing.



Privacy notices

A Privacy Notice only needs to be a simple document, laying out clear, easily understandable facts surrounding your data management process.

You should include:

- **Type of data that is being collected** – name, date of birth etc
- **Who is collecting it**
- **Legal basis for collecting data**
- **Who has access to it** – You, any third party data processors (refer to their Privacy Policy)
- **What will be the effect of sharing to these organisations have this on the individuals concerned?**
- **How is it collected** – email/digital form/in person etc
- **Why is it being collected** – are there different types of potential processing?
- **How will it be used** – what are you planning to do with it?
- **How it WON'T be used** – what will you NOT do with it
- **How data will be stored/protected** – Cloud storage, how long will you store it etc
- **How you would manage a data breach**
- **The potential consequences of choosing to not provide data** (not being able to issue a tenancy agreement, for example)
- **Provide a clear way to contact you to stop processing of their data completely, or stop aspects of processing**

It's useful to issue a privacy notice separately to your tenancy agreement (rather than including it), if you have to make any changes, you can reissue without having to change the entire agreement.



Data breaches

One of the requirements of GDPR is to make sure you have the correct procedures in place to detect, report and investigate a personal data breach.

You must notify the 'relevant supervisory authority' of any data breach that could result in a risk of rights and freedom of individuals, including discrimination, damage to reputation, financial loss, loss of confidentiality or any other significant economic or social disadvantage. In addition, you would also have to notify the person who's data had been breached.

Anyone handling data is required to be registered with the Information Commissioner's Office (ICO), and one of the benefits of registration is that the ICO offer support and advice.

An annual membership of the ICO is £40 - <https://ico.org.uk/for-organisations/register/>

THIS IS REALLY IMPORTANT!



Getting ready checklist

- **Create a privacy policy and consent form**
- **Review your process on how you ask for customer data - consent is key!**
- **Create a process for the secure storage, and deletion of data**
- **Audit the data you already hold** – make sur everything is current, correct and consenting!
- **Contact Data Processors that you regularly transact with** (agents, property managers, referencing agencies, maintenance companies etc), gather their full contact details and ask about their GDPR data management policy
- **Register with the ICO!** This is really important!

Landlord Privacy Notice

1. Summary

This Privacy Notice is a document available to anyone who rents property from:

Landlord Name

The purpose is to explain how we collect and process tenant's personal information in order to conduct normal business activities as a UK landlord.

2. Who we are

Landlord Contact Details

3. Purpose for data collection and processing

Normal activities can be summarised as:

- Providing a residential dwelling under an Assured Shorthold Tenancy Agreement
- Property and grounds maintenance and repair
- Managing your housing, tenancy/lease and account as your landlord
- Meeting contractual and statutory obligations as your landlord

4. Data storage

All data is stored in the following way:

- Cloud based-password protected system, within a secure facility which has limited access.
- Password protected home computer

Locked filing cabinet

Other

Personal information is stored and managed within systems which are maintained to achieve a high level of confidentiality

5. The lawful basis for the processing.

Contract: Data is processed under contracts if it is required to comply with contractual obligations.

Legal obligation: Data is processed under a legal obligation basis if it is required to comply with common law or statutory obligation.

Consent: Data is processed under consent if it is intended to be shared with processors (see section 8).

6. The categories of personal data obtained (if the personal data is not obtained from the individual it relates to).

The information we require from you, the tenant(s) or leaseholder(s), includes:

- Full name (and proof of your identity / photo ID).
- Contact details (phone, e-mail or correspondence address).
- Details of anyone authorised to act on your behalf if applicable.
- Basic details (name and DOB) of all household residents.
- Banking details if you pay your rent by Direct Debit.
- Card details if you pay by card (however card details are not stored).
- Proof of housing eligibility, any interest or equity in other property.

Other personal information that will vary on a case by case basis to help us resolve breach of tenancy, alleged anti-social behaviour or fraud. The information we may collect from you includes:

- Disabilities or vulnerabilities. We use this information to tailor our service to better meet your circumstances and needs.

- Financial information. We may use this to help resolve arrears payments and optionally to provide welfare, benefits and debt advice as a free service to help you budget and pay your bills.

7. What processing we may do with information collected

The information we require from you is used to manage your tenancy or leasehold agreement or other contracts. Please read your contract carefully for specific details as 'performance of a contract' is usually the legal basis for processing your information and carrying out our activities. The processing activities we conduct can be summarised as:

- Managing your account charges and payments, including arrears.
- Managing the repairs, maintenance and adaptations of our properties.
- Ensuring tenancy (or contract) conditions are complied with, such as dealing with anti-social behaviour or fraud.
- Complying with relevant legislation and regulation.

8. The recipients or categories of recipients of the personal data

If necessary, your data could be shared with relevant third parties in order to complete our service. If passed to a third-party processor, your data is then governed by their Privacy Policy. We hold no responsibility for the privacy policies or practices of other organisations.

Third parties include contractors who are carrying out services on our behalf, government departments and agencies, regulator and auditors, utility companies or with other organisations and agencies where we are legally allowed to do so.

Information relating to a tenancy or lease agreement will be kept for as long as the agreement is active or where money is owed on the account, and for a period not exceeding seven years afterwards. We may need to share information with solicitors, estate agents, mortgage brokers, financial advisors, and court agents.

A full list of third parties can be found in the Processor List.

We may update the list of third parties referred to within our Processor List at the renewal or your tenancy agreement. You should review the list after every update. If you do not object to your data being disclosed to any additional Processors within 30 days after the provision of the updated list, you are deemed to have accepted the changes to the list and to this Privacy Policy.

9. The retention periods for the personal data.

Contract: 7 years

Legal obligation: 7 Years

Consent: 28 days after the end of the tenancy

10. Your rights, the right to complain, and the Information Commissioners Office

You have the right to request a copy of the data we hold about you.

Please contact if you wish to request access to any of your personal data and we will always endeavour to answer your questions as part of our friendly, helpful service. After 25th May 2018 we will not normally make a charge for this service and will respond within one month of receiving your request. It will always help if you can be as specific about what personal data you want to see, what it relates to and within what timeframe, as that will assist our search.

You have the right to correct information that we hold. Please advise us of any changes or corrections by contacting .

You may withdraw your consent to use any information that was previously provided with your consent. Please advise us if you wish to withdraw any consent previously given.

Your full rights as a data subject are available by visiting the Information Commissioner's Office (ICO) website at <https://ico.org.uk/>.

You have the right to complain about any matter relating to our service, including how we use your personal data: In the first instance please contact:

If you wish to complain about our use of your personal data you may complain to the UK Information Commissioner's Office (ICO) at <https://ico.org.uk/>.

11. The details of whether individuals are under a statutory or contractual obligation to provide the personal data (if applicable, and if the personal data is collected from the individual it relates to).

Landlords who let private property in England or take in lodgers could be liable for a civil penalty if they enter into a tenancy agreement involving an illegal migrant. If a landlord makes the checks and retains copies as required, they will have a statutory excuse against such a penalty. Landlords and agents should apply the right to rent checks in a fair,

justifiable and consistent manner, regardless as to whether they believe the prospective tenant to be British, settled or a person with limited permission to be in the UK. As such it is necessary for a UK landlord to obtain and retain document as per the government guidance before a tenancy begins. More information on what information this consist of can be found here:

<https://www.gov.uk/check-tenant-right-to-rent-documents>

12.Changes to the information

We regularly review and, where necessary, update our privacy information.

If we plan to use personal data for a new purpose, we update our privacy information and communicate the changes to individuals before starting any new processing.

Our processor list will be reviewed at the renewal or your tenancy agreement. You should review the list after every update. If you do not object to your data being disclosed to any additional Processors within 30 days after the provision of the updated list, you are deemed to have accepted the changes to the list and to this Privacy Policy.

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13. Best practice

We undertake regular information audits to find out what personal data we hold and what we do with it. We put ourselves in the position of the people whose data we hold and ensure that our policies and procedures provide the best level of protection for their sensitive information.

YOUR BUSINESS NAME HERE Processor list

Property address: XXX

Date issued: XXX

Next update due: XXX

Category	Party name	Purpose	Data shared	Privacy policy	Consent (if required)
Type of processing carried out	Name of company	How does this processor (company) work with the controller (landlord)	What data will be shared with this organisation	YES or NO	YES or NO

Tenancy details

Include processors such as: Letting agent, managing agent, tenant find service, Council housing service, eviction services, referencing company, credit checker, right-to-rent verification company

Maintenance

Include processors such as: Electricians, plumbers, gas safety engineers, decorators, maintenance teams, gardeners, handyman, utility companies

Back office

Include processors such as: Solicitors, cloud storage provider, website host, email server, insurance broker

Finance

Include processors such as: Deposit service, accountant, payment systems, debt collection

YOUR BUSINESS NAME HERE Data Consent form

Property address: XXX

Date issued: XXX

Next update due: XXX

This document is designed to request consent for processing data in order to conduct normal business activities as a landlord.

Landlord Name and contact details

This document is to confirm that the above business is requesting the information of the below individual, to store and process their data in line with the General Data Protection Regulations.

Tenant Name

Date

Purpose for data collection and processing

Normal activities can be summarised as:

- Providing a residential dwelling under an Assured Shorthold Tenancy Agreement
- Property and grounds maintenance and repair
- Managing your housing, tenancy/lease and account as your landlord
- Meeting contractual and statutory obligations as your landlord

Sharing your data with processors

If necessary, your data could be shared with relevant third parties in order to complete our service. If passed to a third-party processor, your data is then governed by their Privacy Policy. We hold no responsibility for the privacy policies or practices of other organisations.

Third parties include contractors who are carrying out services on our behalf, government departments and agencies, regulator and auditors, utility companies or with other organisations and agencies where we are legally allowed to do so.

Information relating to a tenancy or lease agreement will be kept for as long as the agreement is active or where money is owed on the account, and for a period not exceeding seven years afterwards. We may need to share information with solicitors, estate agents, mortgage brokers, financial advisors, and court agents.

A full list of third parties can be found in the Processor List. Please state **yes** or **no** in the consent column if you are happy for your data to be passed to the individual processors.

We may update the list of third parties referred to within our Processor List at the renewal or your tenancy agreement.

How your data will be used

This document is designed to request consent for processing data in order to conduct normal business activities as a landlord.

Please see attached Processor List for full details of processor data use.

Changes to information

We regularly review and, where necessary, update our privacy information.

If we plan to use personal data for a new purpose, we update our privacy information and communicate the changes to individuals before starting any new processing.

Our processor list will be reviewed at the renewal or your tenancy agreement. You should review the list after every update.

Withdrawing consent

You are within your rights to withdraw consent from any stage, by any processor.

in order to do this, please contact:

Landlord contact details

Withdrawing consent to process will not detriment your position as a tenant of **YOUR NAME HERE**.

A request for withdrawal of consent will be acted on as soon as a request is received.

If you wish to complain about our use of your personal data you may complain to the UK Information Commissioner's Office (ICO) at <https://ico.org.uk/>.

Signed:

Signature

Tenant name

Date



Any questions?

e: p.rivers@urban.co.uk

t: 0800 689 9955

w: www.urban.co.uk

(I am consenting to you having my data!)