

# Data Protection and Trusts

Thursday 13 August 2020

**Speakers: Edward Hayes (Burgess Salmon LLP)**

**Chair: Fiona Macfarlane (RBC)**

**STEP Jersey is sponsored by:**



---

# Data Protection and Trusts

## STEP Jersey

**Edward Hayes**

**Senior Associate (Tax, Trusts and Family)**

**at Burges Salmon LLP**

**Chair of STEP's Data Protection Working Group**

# Why is it worth getting this right?

---

- Penalties can be the higher of:

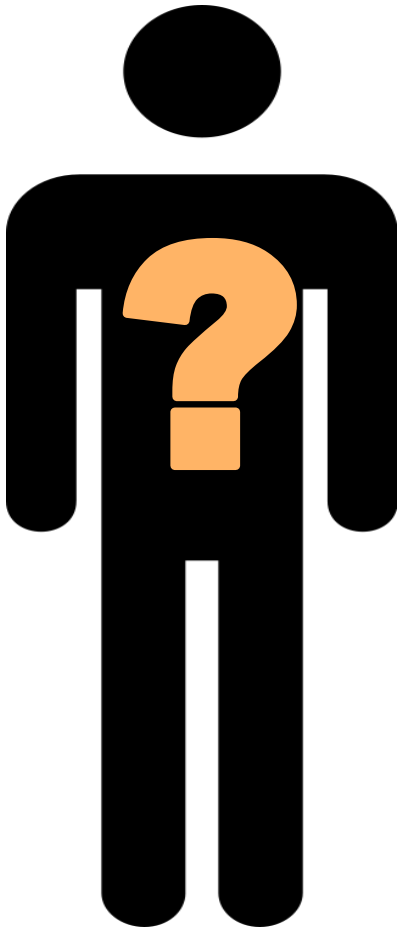
**4% of turnover or EUR 20 million**

- £189m fine for BA
  - £99m fine for Marriott
  - Potential for beneficiaries to use data rights when seeking to challenge trustees
  - Naming and shaming
-

# The GDPR at a glance

---

The GDPR applies to the “processing” of “personal data”



## Processing

Includes (but is by no means limited to):

- Collecting personal data
- Reviewing personal data and making decision on the basis of it
- Storing personal data
- Transferring personal data

## Personal Data

- Information which can be used to identify a living person (*whether on its own or when combined with other information*)
  - Information which relates to a living person who has already been identified or could be identified
-

# The GDPR at a glance

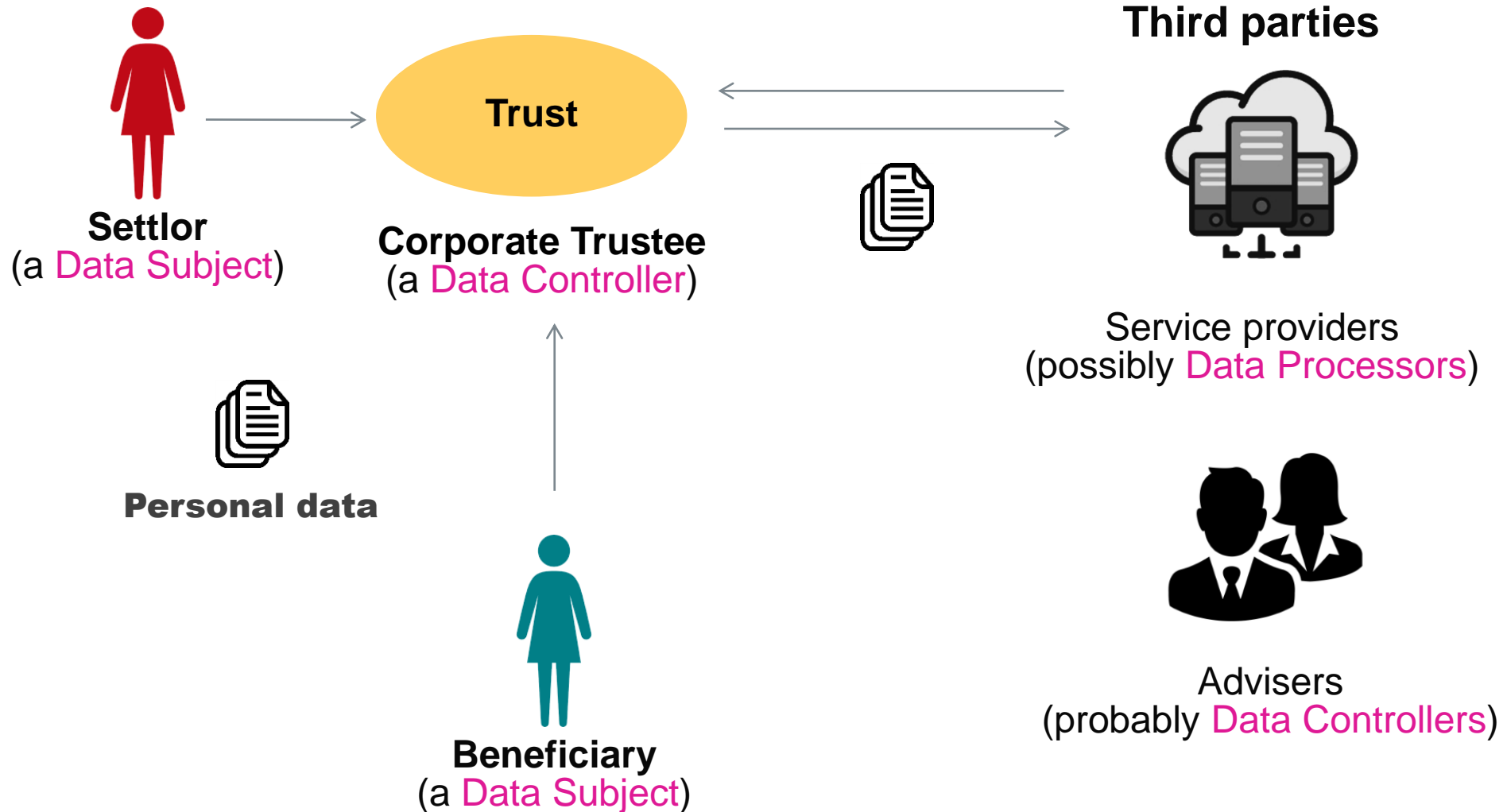
---

## Data Processor or Data Controller?

It's all about who is making the **choices**



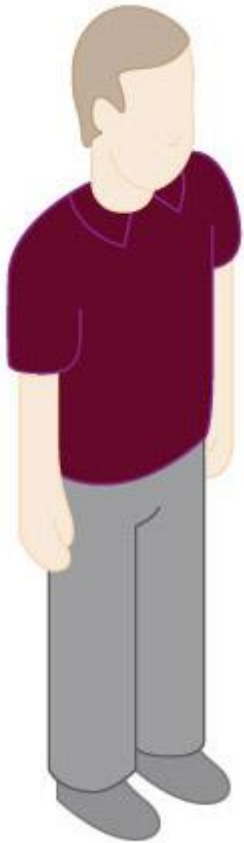
# The GDPR at a glance



# “Purely personal or household” activities

---

**Article 2(2)(c):** “*This Regulation does not apply to the processing of personal data... by a natural person in the course of a **purely personal or household activity***”



**Lay** trustees  
and  
personal  
representatives



**Professional**  
(including  
corporate)  
trustees  
and personal  
representatives

---

# Who is subject to the GDPR?

---

- EU member states
- EEA members
- Some jurisdictions with adequacy decisions have effectively implemented the GDPR themselves (e.g. the channel islands)
- Note that some jurisdictions that are geographically within Europe such as Monaco are not directly subject to the GDPR
- But the GDPR also has **extraterritorial scope**





# Territorial scope

---

**Article 3(2):** “This Regulation applies to the processing of personal data of data subjects who are **in** the Union by a controller or processor not established in the Union, where the processing activities are related to:

(a) the **offering of goods or services**, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or

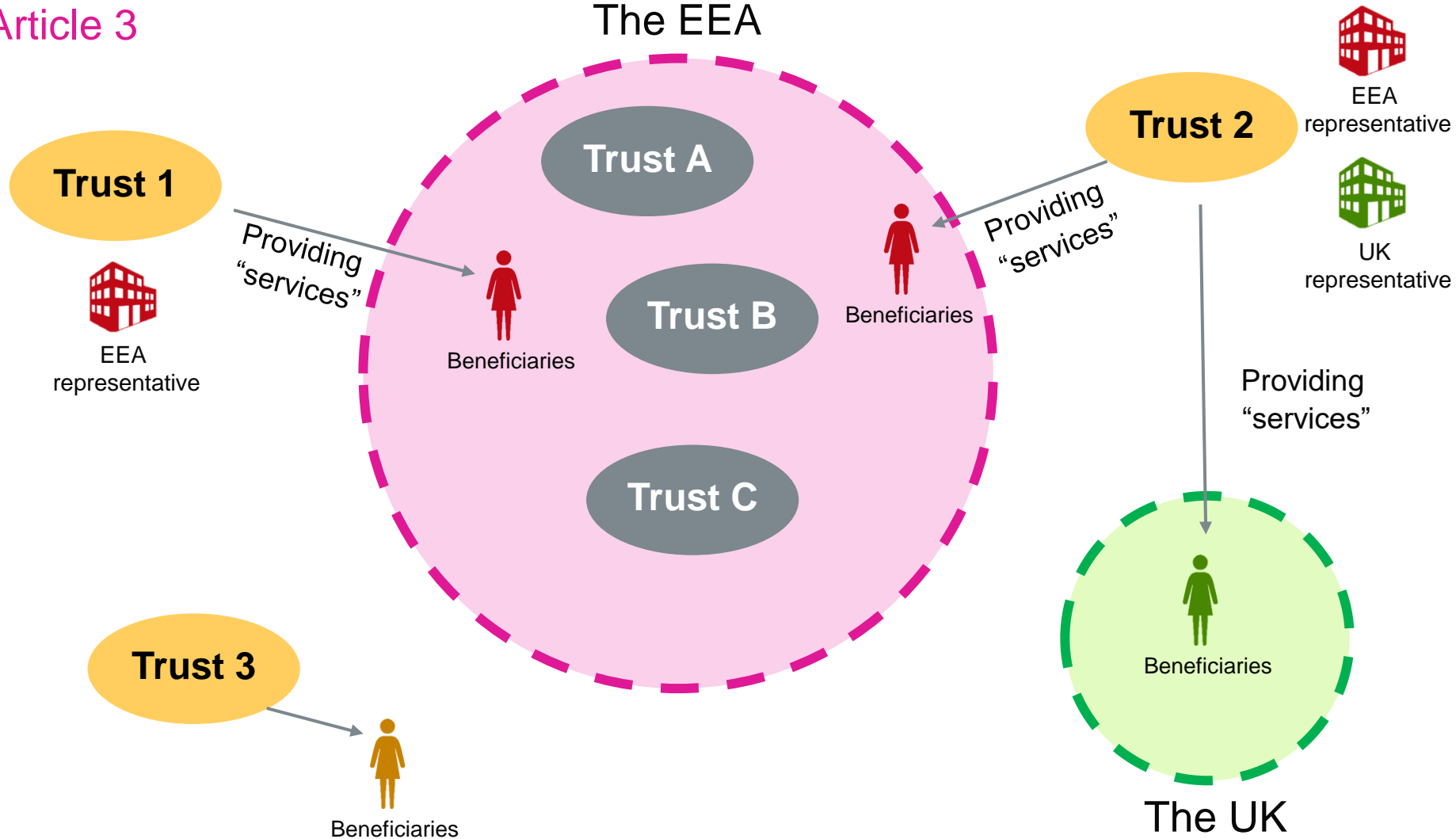
(b) the **monitoring of their behaviour** as far as their behaviour takes place within the Union.”



# Territorial scope

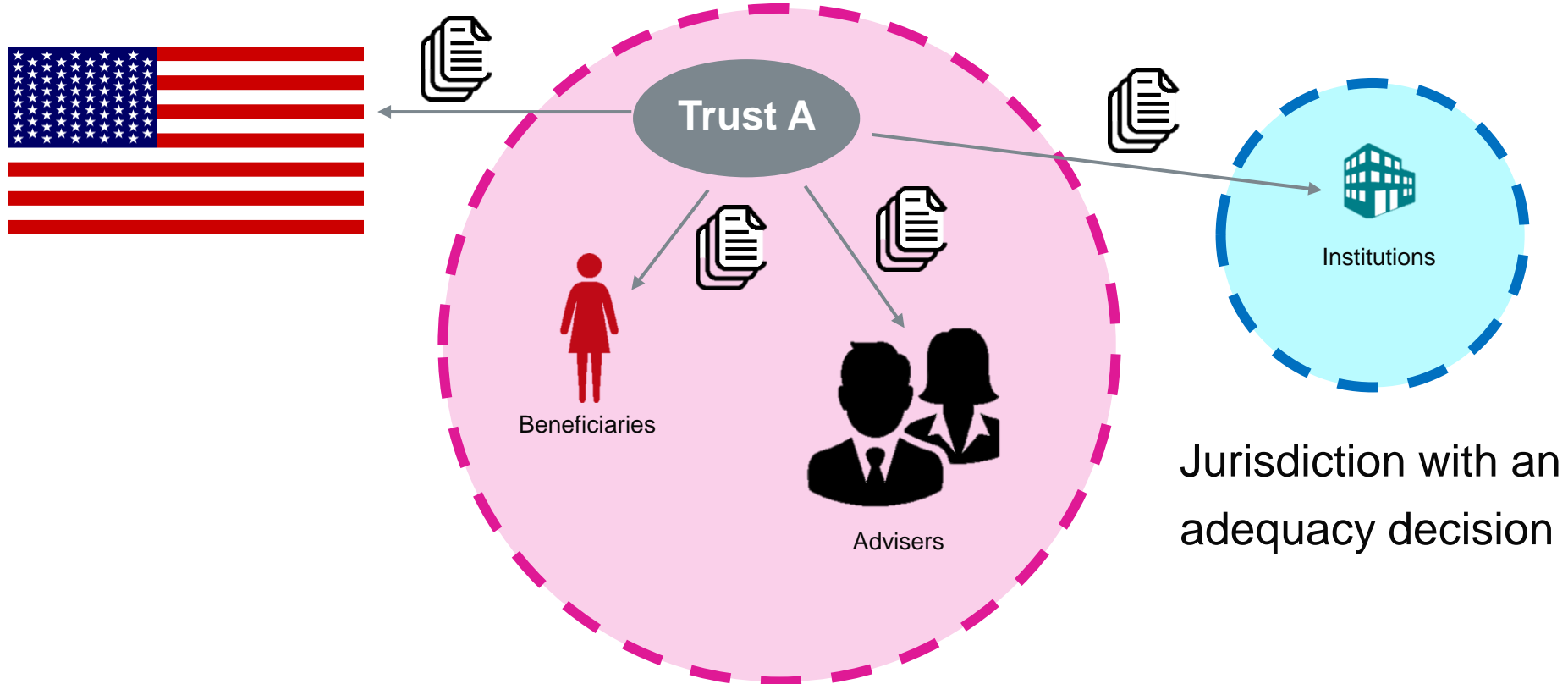
## Article 3

The EEA

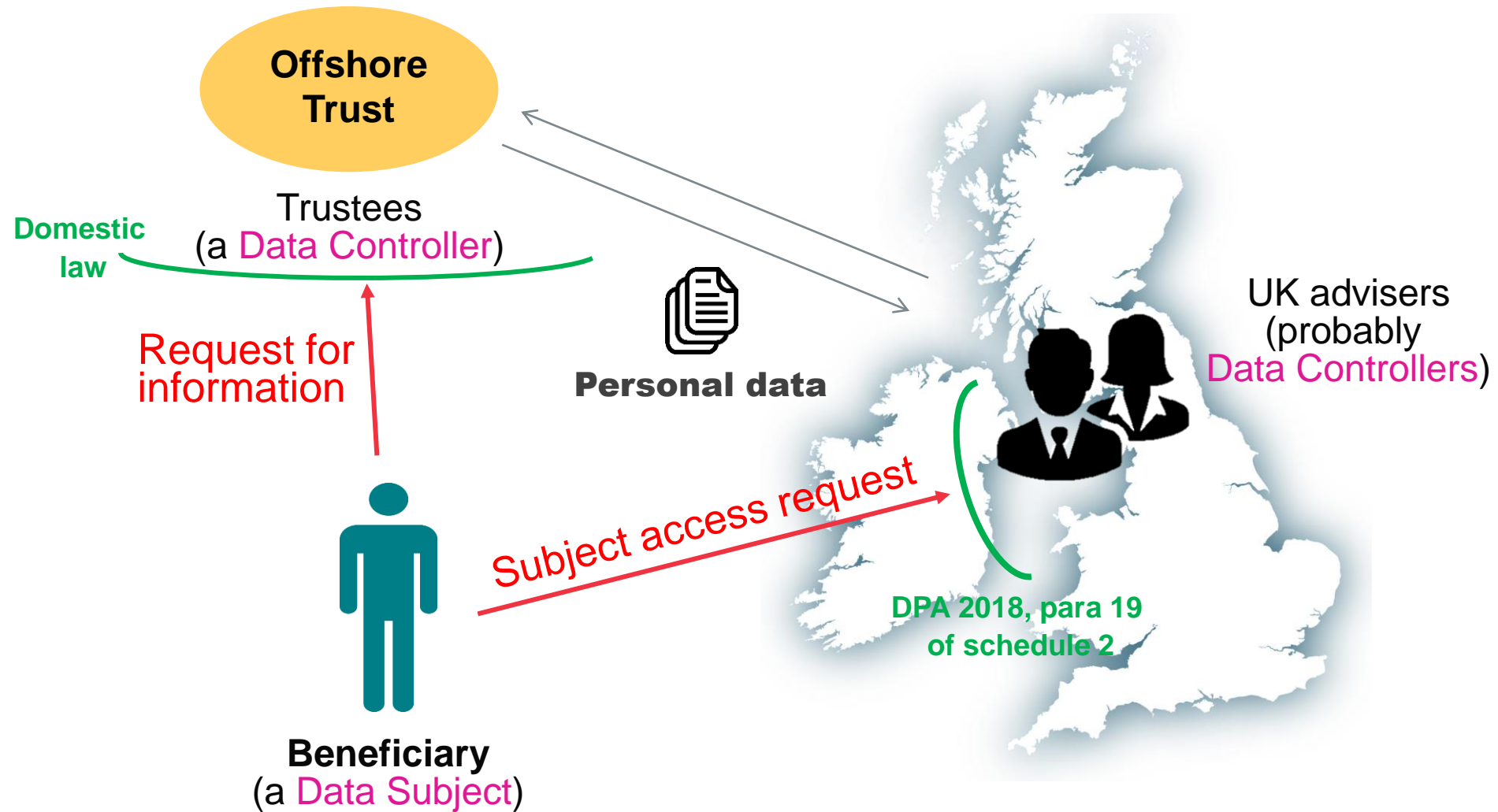


# International data transfers

Article 49(1)(e)



# Using advisers in the UK



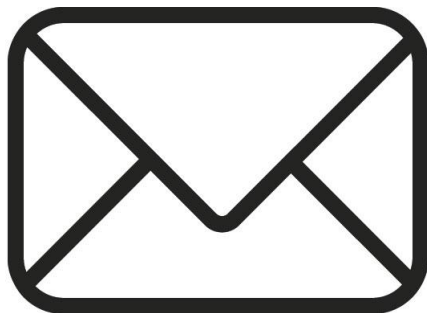
# Providing information to beneficiaries

---



## **Proactive** disclosure of information

(privacy notices etc.)



## **Reactive** disclosure of information

(subject access requests)

---

# Special rules for special category data

**Regular  
personal  
data**

Requires a “lawful  
basis” for  
processing (Art 6)

**Special  
category  
data**

Requires a “lawful  
basis” for  
processing (Art 6)

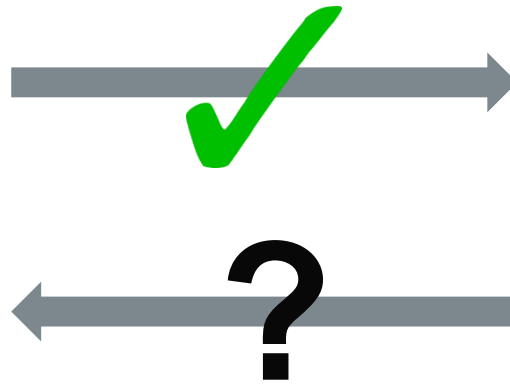
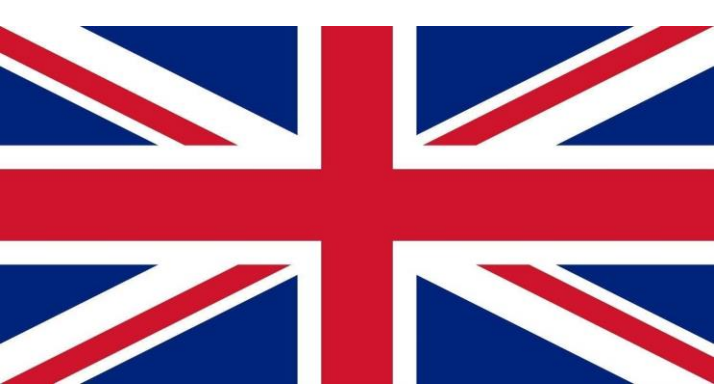
**AND**

Requires an  
additional justification  
(Art 9)

UK domestic data protection law is likely to mirror the GDPR, at least initially

## BUT

Without an adequacy decision, the UK would become a “third state”.  
Data controllers in the EU would face additional restrictions when transferring personal data to the UK. Data controllers in non-EU jurisdictions would need to consider their own domestic law





**[www.burges-salmon.com](http://www.burges-salmon.com)**

This presentation gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

© Burges Salmon 2018



**THANK YOU FOR YOUR ATTENDANCE**

---

**STEP Jersey is sponsored by:**

