Appeals under section 208 of the
Town and Country Planning Act 1990

A Guide for Appellants
(Tree Replacement Notices)

This guidance sets out the procedures for appeals made to the Secretary of State under section 208 of the Town and Country Planning Act 1990 against Tree Replacement Notices issued by councils under section 207 of the Act.

This guidance relates only to appeals in England.

Only the courts can give an authoritative interpretation on any point of law, so this guidance has no legal force.
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1. **Introduction**

Under section 206(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) a landowner has a duty to replace a tree which is removed in contravention of a tree protection order (TPO). Where the duty is not complied with, local authorities (this may be a district council or a unitary authority but we will call them "councils") have powers, under section 207 of the Act, to issue tree replacement notices (TRNs). These powers are also exercised where a tree is removed in a conservation area in contravention of section 211 of the 1990 Act (i.e. without giving the council six weeks’ notice) and in circumstances when a condition to plant a replacement tree, on a consent to fell a tree under a TPO, is not complied with. Section 208 of the 1990 Act gives people served with a TRN a right of appeal to the Secretary of State.

The Secretary of State has delegated his appeal functions to the Planning Inspectorate (see section: *The Planning Inspectorate - who we are and what we do*).

This guidance is issued by the Planning Inspectorate and explains how and when an appeal must be made, and how we will deal with it. The Town and Country Planning Act is available at larger public libraries. You can also find it on the Internet at: [http://www.legislation.gov.uk/](http://www.legislation.gov.uk/).

The Department for Communities and Local Government (CLG) has issued guidance about Tree Replacement Notices as part of the Planning Practice Guidance suite. You can access the guidance via the Internet: [Tree Preservation Orders and trees in conservation areas | Planning Practice Guidance](http://www.legislation.gov.uk/).

2. **Do I have the right to make an appeal?**

You, or an agent acting on your behalf, can appeal if you were the person served with the TRN.

**Grounds of appeal**

An appeal against a TRN must be made on specific grounds as set out in section 208 of the 1990 Act as amended by the Planning and Compensation Act 1991. The statutory grounds of appeal are:

- that the duty to replace the tree is not applicable or has been complied with;
- that in all the circumstances of the case the duty to replace the tree should be dispensed with;
- that the requirements of the TRN are unreasonable in respect of (i) the size of the tree, or (ii) the species of the tree, or (iii) the period given;
- that planting the tree in line with the TRN (i) is not required in the interests of amenity, or (ii) would be contrary to the practice of good forestry;
- that the place on which the tree is or trees are to be planted is unsuitable for that purpose.

3. **How and when do I appeal?**


You may also obtain a form by telephoning or writing to us (see section 19 of this guidance). If you visit the .GOV web site, you will be able to complete the appeal form and return it to us electronically by e-mail to: treeandhedgeappeals@planninginspectorate.gov.uk (you will need Adobe Professional software) or you can complete it, print it out and post it back to us.

Where possible we would prefer appeals to be made electronically, but do not worry if you cannot do that. Whether an appeal is sent electronically or on paper will not influence its chances of success.
When submitting an appeal electronically you do not need to complete it with an electronic signature. If you submit the form electronically but post supporting documents, please include your name and address on the papers so that we can link the posted documents with your appeal form. If you submit an appeal electronically please do not send an additional paper copy.

When submitting your appeal to us please attach a copy of the TRN and any explanatory document sent by the council when they issued it. You must send a copy of your appeal to the council at the same time that you submit it to us. If you do not send your appeal documents to the council we may decide that your appeal is invalid. You should also keep an additional copy of your appeal form and supporting documents for your own reference.

When completing the appeal form you must set out the grounds of appeal and state the facts on which the appeal is based. A simple statement that you are appealing against the TRN would not comply with the requirements, and appeals that fail to comply with the requirements will be turned away.

You do not need to submit the documents already held by the council because they will be forwarded to us at a later stage (see section 7 of this guidance). However, if you want to make a point that would be best illustrated by a plan or photograph, you should send a copy with the appeal form.

You must indicate your choice of procedure (see section 6).

The completed appeal form and any supporting documents must be received by the Planning Inspectorate at least one working day before the TRN takes effect. This means that if the notice takes effect on a Sunday or Monday it must be received by us on the previous Friday, unless you can prove that any delay has been caused by postal disruptions. Apart from this one exception, we have no discretion to accept late appeals. Nor can we extend the period for making appeals.

The TRN is suspended pending the Secretary of State’s determination or the withdrawal of the appeal.

Representations can only be taken into consideration if they are made known to both parties and, in the interests of transparency, representations will also normally be made publically available. The Inspector cannot consider representations other than those made available to the parties.

It is your responsibility to ensure that the representations that you submit are appropriate to the appeal. Representations may be returned where they contain comments which are offensive or which include personal data that is clearly unrelated to the determination of the appeal.

4. Who is involved?

The parties to an appeal relating to a TRN are:

- the appellant;
- the council.

5. How much will it cost?

There is no charge for making an appeal but you will have to pay your own costs. This means that if you employ a professional adviser (e.g. a solicitor or arboriculturalist) to help you make your appeal, you will have to pay for their services. If you choose to be heard at a hearing you must meet your own preparation costs and any loss of income brought about by your
attendance at the event. Although there is no charge for submitting appeals, they are expensive to administer and time-consuming for everyone and so should not be made lightly.

6. How will my appeal be decided?

You and the council have a right to be heard (i.e. appear before an Inspector at either a hearing or inquiry). When deciding which procedure to choose you should bear in mind that the fast-track process is considerably quicker and cheaper than the hearing or inquiry procedures. Although you have a right to be heard, we will decide which procedure (hearing or inquiry) is adopted, although when reaching a decision we will take your views, and any views expressed by the council, into account. Hearings and inquiries are not governed by statutory rules of procedure but we administer them in accordance with the sections 11 and 12 of this Guidance.

Whichever procedure is used will have no bearing on the quality of the decision which will be based entirely on the merits of the case. A site visit will be undertaken regardless of the procedure unless, due to very exceptional circumstances, we decide that an inspection is not required.

7. What happens when you receive my appeal?

When we receive your appeal, we will check that you have completed the form correctly, and that you have included valid grounds of appeal (see section 2). We will also check to establish that the appeal has been made before the notice is due to come into effect. Where applicable, validation of the appeal also includes checking that the council has served the TRN within four years from the landowner’s alleged failure to comply with the duty to plant the replacement tree. If the TRN has been served after the four year period it is not valid and we will have no jurisdiction to process the appeal.

You must send a copy of your appeal to the council. On receipt of their copy the council will send us the preliminary information listed below:

- a copy of the replacement notice;
- where the notice has been issued following a failure to plant replacement trees, the original application for consent, and the council’s notice of consent;
- where the notice has been issued as a result of the unlawful removal of a tree, the date of the unlawful removal, if not included in the notice;
- where the notice has been issued as a result of a failure to replace a removed, exempted (dying, dead or dangerous) tree, the date of the alleged failure, if not included in the notice.

This information will enable us to complete the validation process.

8. What happens if something is missing?

If at any stage of the appeal process, we, or the Inspector, decide further information is required we will write to you and/or the council to request it. The information requested must be submitted within the period we specify. Unless you/the council can provide exceptional reasons for not being able to meet a deadline, we will reject submissions that are received after the specified period.

9. Fast Track (written) Procedure

The Fast Track (written) procedure is one where by an Inspector will make a decision based upon the documents submitted with the appeal and also upon documents submitted as a result of a questionnaire sent to the council. This procedure aims to reduce the length of time for a decision to be made and is one that we would recommend for most cases.
As soon as is reasonably practicable, after receiving an appeal, we will send the council a questionnaire which we shall copy to you. The council will then send us and you a copy of the completed questionnaire and any documents submitted with it.

10. The Inspector’s site visit

When we are satisfied that we have all the relevant documentation, we will pass the appeal file to the Inspector who will conduct a site inspection, unless we decide that a site visit is unnecessary, but this will happen very rarely.

Unaccompanied site visit (USV)

During the appeal process we will ask you whether the site can be inspected at close quarters from public land, a footpath, the roadside or whether it is in readily accessible private land e.g. in an open-access front garden. Where the answer to this question is yes an unaccompanied site visit will be arranged.

Access required site visit (ARSV)

If the site cannot adequately be viewed from public land the Inspector will need to be given access and we will write to ask you either to be there yourself, or to arrange for a relative or friend to be there, simply to facilitate access to the site. No council representative will be present at the visit and for this reason it is particularly important that you or your representative do not attempt to engage the Inspector in conversation about the merits of the appeal, although points of particular interest can be drawn to the Inspector’s attention.

Accompanied site visit (ASV)

Where there is a need for both the appellant and the council to be present at the site visit, an accompanied site visit will be arranged. If a party fails to turn up on the appointed day the Inspector will decide the best course of action, which may mean that the visit is aborted and would have to be rearranged.

Third Parties

Any third parties who made comments on the TRN will not be invited and are not permitted to attend.

Conduct at the site visit

Whether you attend or not will have no bearing on the decision since discussion is not permitted during the inspection and the Inspector will not accept any supplementary oral or written evidence on site. However, while on site, those in attendance will be allowed to point out things that have been referred to in the written statements.

Site in a wood, park or farmland

If the site in question is not situated in a garden but in a wood or park or on farmland we will ensure that all parties who are permitted to attend receive clear instructions about where to meet the Inspector.

Request for further information

If necessary, the Inspector may request further information after the site inspection has taken place. However, unsolicited representations received after the site inspection will be returned to the sender unless the person submitting them can demonstrate that there were exceptional reasons which prevented their submission in accordance with the regulations or as otherwise specified by us.

11. Hearing Procedure:
A hearing is a round table discussion which is led by the Inspector. It is more informal and usually quicker than an inquiry and the Inspector will encourage the parties to focus upon the main issues of disagreement. A hearing will usually be a more appropriate forum to consider tree appeals, unless the case involves cross-examination of a number of witnesses or generates such interest that large numbers of people wish to attend.

We will send a questionnaire to the council (see paragraph 9) and in the same letter will set a start date for the appeal. At the same time we will write to you, informing you of the start date. The start letter will confirm the contact details of the case officer who will process your appeal, and the procedure to be adopted. The start date is the date on which the clock starts ticking for the submission of further representations, and our letter will set out the statutory timetable which applies to you and to the council. **It is your responsibility to keep to this timetable - we will not send you reminders.**

**The 2-week deadline**

Within 2 weeks of the start date the council must have provided us with a copy of the completed questionnaire together with all of the documents listed on it which they indicate are being submitted to the Inspector for consideration.

**The 6-week deadline**

We must receive your **statement of case**, which sets out your side of the argument, within 6 weeks of the start date unless you intend to rely only upon the grounds that you entered onto your appeal form. The statement does not have to be in any particular format and it can be submitted on paper or electronically. If you decide not to send a statement of case within 6 weeks you will still be given the opportunity to comment on the statements and representations submitted by the council and third parties (see **The 8-week deadline below**).

The council may also notify any third parties who commented on the TRN or the circumstances that led to it, of your appeal and that they may also submit representations to us. All representations that have been received within the specified time will be copied to you and the council once the 6-week deadline has passed. Your statement of case and the council’s will be despatched by us to the other party at the same time.

Your statement of case should be concise and should concentrate on the main issues. It should set out the key facts, reasoning and conclusions necessary to make your case in a logical form. Each party will only get the full benefits of the hearing if you, the council and the Inspector have an opportunity to consider the issues beforehand. The hearing can then be an open discussion of the main issues without witnesses having to be examined. If appropriate, expert opinions should also be obtained and backed up with evidence. If you intend to call somebody to speak on your behalf their statement should be included in your statement of case.

The statement of case may be used, in whole or in part, for reference at the hearing and by the Inspector in writing his/her decision. When preparing your statement you should bear in mind that evidence will not necessarily be accepted just because it has not been challenged by another party. Our Inspectors bring their own experience, knowledge and judgement to all evidence presented to them.

If more than one document is referred to in your statement of case and will be submitted as evidence, an index should be provided and each page of the statement numbered.

Photographs should be representative of actual views, rather than distorted by special lenses or digitally manipulated. The Inspector will inspect the site, and may wish to see it from the viewpoints shown in photographic evidence.
The 8-week deadline

Within 8 weeks of the start date you and the council may comment on each other's statements made before the 6-week deadline and on any comments submitted by third parties. We expect both you and the council to have given us all evidence in the grounds of appeal and statements of case, so the opportunity to comment at 8 weeks must not be used as a means of introducing new material or putting forward arguments that should have been included in your 6-week statement. **We will reject and return representations received at this stage if they raise new issues.**

Unless a shorter period of notice is agreed with you and the council we will give at least 4 weeks notice of the arrangements for a hearing. We may require the council to place a notice of a hearing in a local newspaper not less than 2 weeks before the hearing is due to open.

We have a duty to decide all appeals as efficiently and cost-effectively as possible whilst giving equal opportunities to all parties to produce valid evidence. For this reason you and the council will only be able to refuse one date offered for the hearing. If you refuse the first date, we will choose an alternative. We will do our best to avoid any dates that you tell us are not convenient, but we cannot guarantee that we will be able to find a more convenient day. If you are unable to attend on the date fixed for your hearing, you should consider sending somebody to present your case for you.

We will also request the council to notify any third parties so that they may attend if they wish to. At a hearing third parties have no right to speak, but may be heard at the discretion of the Inspector.

The Inspector will usually adjourn the hearing to the site and allow further discussion to take place there before closing it. However, where the Inspector considers there would be no benefit from continuing discussion on site, the visit will take place after the hearing has been closed. The Inspector will conduct the inspection in the company of the main parties unless one party drops out or is unhappy about giving another party access to their land, in which case an unaccompanied site visit will take place (see section 10).

12. Inquiry Procedure:

The procedures are the same as set out above for the hearing procedure (see section 11) but additionally there will be an opportunity to submit a proof of evidence. Exceptionally there may also be a need for a pre-inquiry meeting (PIM) in order to agree the topics that will be discussed at the inquiry and those which will not be raised. At any PIM you will normally be required to agree a statement of common ground.

The procedure at the Inquiry will be determined by the Inspector who conducts it, however, as a general guide, it will normally take the following form:

- The Inspector will introduce him/herself. He/she will then explain how the inquiry will continue.
- The Inspector will then identify the likely main issues – again referring to the pre-inquiry meeting if there was one, and the position on the receipt of proofs of evidence.
- You (or your representative) and the council may be invited to make a brief opening statement of not more than 15 minutes.
- The council will give evidence first and you will then have the right to make your case in full. Third parties will be heard in the order determined by the Inspector. Regardless of who is speaking, the Inspector may refuse to hear evidence that is irrelevant or repetitious or offensive.
- The council calls their witnesses in turn to give evidence. Witnesses may then be cross-examined by you. You must use this opportunity to ask questions only. If the Inspector considers that you are making a statement rather than asking questions, or if
your questions are repetitive, he/she will stop you. The witnesses are then re-examined by the council, but this must be strictly confined to matters raised in cross-examination.

- The Inspector may ask you, the council and witnesses questions to obtain relevant information. If the questions asked by the Inspector raise matters which could harm that party’s case additional re-examination will be allowed.

- This process is then repeated for you and your witnesses.

- Only you and the council have the right to cross-examine, although the Inspector may permit other persons to do so if they have stated they wish to speak.

- You will have the right of final reply.

- The Inspector may then make arrangements for a site visit before formally closing the inquiry.

13. What happens if I decide to withdraw my appeal?

You can withdraw your appeal at any time. If you decide to withdraw your appeal you must confirm it in writing to us as soon as possible so that we may write to the other parties and let them know that we will take no further action on the appeal. In these circumstances the original decision issued by the council will again become live and any conditions to which it is subject will take effect from the date the appeal is withdrawn. However, you should be mindful of costs implications if you have asked to be heard and only withdraw your appeal at a late stage (see section 16).

14. The decision

The Inspector may proceed to a decision in the absence of any representations if it appears to him/her that there is sufficient information to enable a determination to be made.

In determining the appeal the Inspector may allow it, in which case the notice may be quashed, or dismiss it. The Inspector may correct any defect, error or misdescription in the TRN and he/she may also vary any of its requirements. However he/she must be satisfied that any correction or variation would not cause injustice or prejudice to the appellant or to the council.

Whatever the decision, when it has been issued, our involvement in the appeal comes to an end and it is for the council to ensure that any of the upheld, varied or corrected requirements of the notice are complied with.

15. Who will be notified of the decision?

We will notify the council, the appellant and, where appropriate, any third party who attended the hearing/inquiry of the Inspector’s decision as soon as possible. A copy will also be sent, on request, to any third party who submitted representations.

16. Costs

In general, whether your appeal proceeds under the fast-track procedure or is heard by an Inspector at a public hearing or inquiry you must meet your own expenses. However, an application for an award of costs may be made by a party on the grounds that the other party’s unreasonable behaviour has caused the person applying for costs unnecessary expense.
**Fast track procedure**

If your appeal is proceeding under the fast track procedure you should submit your full written costs application at the same time that you submit your appeal. Your application must be supported by a full statement on why an award of costs is considered justified. You will need to show that the council’s decision on your application was unreasonably made on the information available to them at the time. It is not enough to submit a vaguely worded application or to merely say that you intend to make an application for costs.

Any costs application made by the council will be required to be submitted to us on or before the date on which the completed questionnaire is returned to us.

In fast-track appeals the decision on the costs application will be dealt with after the appeal decision has been issued and will involve an exchange of written representations between the applicant and the party against whom the application is brought.

**Hearings and inquiries**

If your appeal is to be heard a costs application, regardless of who is making it, should be submitted in writing before the hearing or inquiry is opened, but all applications must be made before the hearing or inquiry is closed. Applications for costs made after the hearing or inquiry has closed are only accepted in very exceptional circumstances. However, a written application may be made if the party who asked for the hearing causes its cancellation at a late stage by requesting a change of procedure or by withdrawing the appeal, thus causing the other party unnecessary expense in preparing for it. In such cases a written application should be submitted within 4 weeks from the date on which notice of the cancellation is given.

At the hearing or inquiry the Inspector will hear the application, and any response from the party from whom costs are being sought, and will write a separate decision on it. The decision will not go into the actual amount of costs involved – only the principle and what the award is broadly for. The decision on the costs application will be issued at the same time as the appeal decision is despatched.

Comprehensive guidance on the award of costs is set out in the Planning Practice Guidance suite:

http://planningguidance.planningportal.gov.uk/blog/guidance/appeals/the-award-of-costs-general/

17. **How do I complain if I am not happy about the way the Planning Inspectorate has handled my appeal?**

If you have any complaints about the decision or the way we have handled your appeal please write to:

The Planning Inspectorate  
Customer Quality Unit  
3H Hawk Wing  
Temple Quay House  
2 The Square  
Temple Quay,  
Bristol  
BS1 6PN

e-mail: feedback@planninginspectorate.gov.uk

The Customer Quality Unit will reply to you, or they will ask someone else within PINS to reply if they have specialist knowledge of the issues raised. They will investigate your complaint and will reply as soon as possible. They aim to reply to 80% of all correspondence within 20 working days.
However, PINS cannot reconsider your appeal if the decision has already been issued unless the decision is overturned in the High Court (see section 19 below).

18. How can I challenge the decision?

We may correct errors in decisions provided the error is not part of the reasoning that supports the decision. Correction notices will usually apply to errors of a relatively minor nature such as typographical errors. We may issue a correction notice if we receive a request from any party in writing but when doing so will first seek the written permission of the applicant/landowner.

There is no separate right of appeal against a decision issued by an Inspector appointed by the Secretary of State. An appeal decision can be challenged by applying to the High Court for a judicial review, which could lead to the quashing of the decision and reconsideration of the appeal. Such a review is designed to ensure that the powers laid down in statute have been exercised properly. It follows that judicial review can only be used to challenge the way in which the Inspector has interpreted the law in making the decision or if the relevant statutory requirements have not been complied with such that they were seriously defective. To be successful you would have to show that a serious mistake e.g. failure to take an important factor into account, had been made or that procedural aspects of the appeal were seriously defective. It follows that what is at issue is not the strength of your arguments and/or the merits of the appeal decision.

Permission is needed to bring an application for judicial review and a challenge must be made within 6 weeks of the appeal decision. Permission to bring a challenge will only be granted to someone other than you where they are able to satisfy the court that they have both sufficient interest in the matter and a reasonable case to put forward. Anyone who is considering an application to the court is strongly advised to seek legal advice. Community Legal Service (CLS) can help you to find the right legal advice. You can search their website at: http://www.clsdirect.org.uk or telephone them on 0845 345 4345.

19. The Planning Inspectorate - who we are and what we do

The Planning Inspectorate is an executive agency of the Department for Communities and Local Government. Its primary function is to determine appeals.

The TPO Appeal Team is based at:

3A Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN
Telephone: 0303 444 5570
e-mail: treeandhedgeappeals@planninginspectorate.gov.uk

The team is responsible for the administration of TPO cases and for ensuring that appeals are processed in a timely manner. The team will also answer general queries on appeal procedures and on the progress of specific cases.

You will find more detailed information about the Planning Inspectorate at: https://www.gov.uk/government/organisations/planning-inspectorate and in the Inspectorate’s Annual Report and Accounts which can be found on the website or bought from Government bookshops.
20. Privacy Statement

This privacy notice provides information about our processing of personal information in respect of tree preservation casework in England.

Who are we?

We are the Planning Inspectorate, an agency sponsored by the Ministry of Housing, Communities and Local Government.

We administer and determine tree preservation appeals on behalf of the Secretary of State for Housing, Communities and Local Government.

How do we collect information?

The personal information that we use is provided to us by the parties making, or taking part, in that case. As part of that process, the council also send us information from their consideration of the case.

What type of information do we collect?

In processing a TRN appeal, we receive information from the appellant, LPA and other interested people who provide appeal representations. The personal information normally includes name and contact details and any other personal information within the representations themselves.

How is that information used?

The information provided to us is used to determine the case. You should be aware that the information provided is copied to other parties and can be made publicly available. We do not normally redact contact information or other information when copying information to other parties - and you should only submit information on that basis.

We do not accept anonymous representations, but you may ask for your name and address to be withheld. If you request this then your name and contact information will be removed, including in the version provided to the Inspector, and your representation may receive less weight as a result.

The appointed Inspector will consider the information provided and reach their decision, providing both the outcome of the case and their reasons for it.

What is the legal basis for our processing of information?

Our processing of personal information is necessary for the effective determination of the case and is therefore necessary for the performance of a task carried out in the public interest. There are also explicit statutory/legal obligations on us in respect of that casework. Our processing of any special category data (if any is provided) is on a similar basis, being necessary for reasons of the substantial public interest in exercise of our official function of administering and determining cases.

What are the consequences of failing to provide your information?

If you fail to provide us with information required to validate your case then we may not be able to consider it. We will normally let you know if this applies.

There is no statutory obligation on interested parties to participate in a case.

How long do we keep your information?
We normally keep copies of the information provided to us on a case for a period of one year following issue of the issue of the decision, and keep the decision itself for 10 years.

**Who do we share information with?**

As set out above and in our guidance, the information we receive is copied to the case parties. We may use third party service providers to assist us in the provision of our service – for instance through the provision of information technology services). Where we do so, contracts will be put in place to ensure that your personal information is processed only as instructed by us (unless otherwise required by law), and that appropriate measures are in place to ensure the security of information.

**Your rights in respect of your personal information**

**Data protection legislation**

Data protection legislation provides you with rights in respect of your personal information. Typically these are:

- the right to be informed;
- the right of access;
- the right to rectification;
- the right to erasure;
- the right to restrict processing;
- the right to data portability
- the right to object;
- rights in relation to automated decision making and profiling.

Given our lawful basis for processing information, your rights to erasure, data portability and to object to the processing of your information may not apply and we do not use automated decision making or profiling.

Your other rights may also not be absolute and, as our legal basis for processing information is not normally dependent on your consent, withdrawal of this is not normally applicable. However, if you have concerns over the use of your personal information, or wish to exercise your rights, then please contact us at the address below.

**Complaints about the processing of your personal information**

When we process your personal information we will comply with the Data Protection Act. If you are unhappy with the way the Inspectorate processes your personal information then you should first contact the Inspectorate’s Data Manager: dataprotection@planninginspectorate.gov.uk.

Data Manager
The Planning Inspectorate
3rd Floor Temple Quay House
2 The Square, Temple Quay
Bristol
BS1 6PN

Alternatively, you can contact our respective sponsor’s Data Protection Officer directly (please make clear that your query/complaint relates to the Planning Inspectorate)

MHCLG: dataprotection@communities.gov.uk

If you are still not happy, or for independent advice about data protection, privacy and data sharing, you can contact: