

Information Commissioner's Office response to the Department for Work and Pensions consultation 'Universal Credit data sharing between DWP and local support providers, to enable them to assess and provide support to vulnerable people as part of the Universal Support (formerly Local Support Services Framework) initiative. A consultation on draft regulations.'

The Information Commissioner has responsibility in the UK for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations (EIR) and the Privacy and Electronic Communications Regulations. The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

We note the Department states that it has already sent the consultation document to a number of people and organisations who may be interested in these issues. The Information Commissioner is surprised and disappointed not to have also received a copy of this consultation or his officials alerted to the proposals given his Office's role in regulating the Data Protection Act and also having issued a statutory code of practice on data sharing - https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf

We have been consulted in the past on data sharing initiatives arising from the Welfare Reform Act such as the Troubled Families initiative and have worked closely with the Department and local support agencies in advising on data sharing and helping to overcome perceived barriers. Additionally the shortness of the consultation period, and falling over the holiday period, has meant that we have been unable to give as much consideration to the content of the consultation as we would have wished. We would welcome the opportunity to meet with the Department to discuss in further detail the data protection and privacy issues arising from the regulations which we note are intended to come into force on 13 February 2015 and be implemented the following month.

The Information Commissioner has a number of comments to make regarding the proposals set out in the draft regulations which, by the sharing of Universal Credit (UC) claimants' personal data, will enable Universal Support to be delivered to those requiring assistance, advice and support.

Firstly, we fully recognise and support the intention of the proposals which are aimed at identifying and addressing the needs of a vulnerable client group with complex circumstances and requirements. We also understand the benefits of measures to support their digital inclusion. Our engagement with organisations such as local authorities, Citizens Advice and other third sector bodies has made it clear to us that

effective data sharing is essential to delivering public services such as Universal Credit, especially when many agencies are involved.

We do however have significant concerns relating to the lack of clarity and detail in the consultation document regarding how the data sharing measures proposed by the regulation will be implemented and operate in practice. In order that the data sharing is undertaken in a consistent and appropriate manner we would expect the Department to take the lead in issuing guidance to both the delivery partners and also UC claimants. We would advise that the guidance must cover the decision making process about when to share data about an individual and to also provide clarity on what circumstances will trigger sharing of claimant data. The regulation states that the need for access to claimant personal data will be determined on a case by case basis by the relevant local partnership. The consultation refers to a triage process, but again, this will be a local decision. We acknowledge that individually tailored data sharing can be helpful but we would advise the Department to produce overarching guidelines so that when local partnerships produce their own guidance it does not lead to wide inconsistencies.

The Information Commissioner's Office has previously experienced an increased volume of calls from both DWP customers – for example in relation to the introduction of Universal Jobmatch – and also delivery partners in other earlier data sharing initiatives where departmental guidance on the operation and application of the respective initiative has been unavailable or insufficient.

The ICO's statutory Data Sharing Code of Practice emphasises the importance of ensuring that information is shared in a way that is fair, transparent and in line with the rights and expectations of the people whose information is being shared. Adopting the good practice recommendations in our code will help the Department and delivery partners comply with the Data Protection Act 1998 (DPA) when deciding whether to share certain information with key partners. Previous experience indicates that using people's information in ways that they expect and understand can help build public confidence in both the data sharing and the service being delivered.

Data sharing on a multi-agency basis will require robust governance arrangements so organisations are clear about their respective responsibilities. We would expect the Department to require data sharing agreements between the delivery partners; the ICO has included examples of data sharing agreements in our data sharing code of practice to which we would recommend that all delivery partners are directed for additional information and guidance.

We have noted the range and extent of the individual UC claimant's data which is to be shared between DWP and local support providers; also the extent of the prescribed welfare purposes which are to be covered by the regulation. The ICO advises that any sharing of personal data should be proportionate and in line with the reasonable

expectations of the individual. We would again expect guidance on the nature and extent of the claimants' personal data to be shared with individual service providers.

We note specifically that the claimant personal data to be provided to delivery partners includes ethnicity and also health conditions / disabilities – both of which the DPA defines as sensitive personal data which therefore must be treated with greater care than other personal data. The Act places additional requirements in relation to the processing of sensitive personal data, including that individuals must give their explicit consent to the processing unless relying on other conditions for processing.

In this context the Information Commissioner has concerns relating to the lack of clarity and confusion about whether the proposed data sharing will be based on UC claimants' consent or the possible use of opt outs as set out in the consultation. We note the consultation states at paragraph 4.3 that 'UC claimants will be informed about the proposed information sharing in keeping with the fair processing requirements of the DPA so that they have an opportunity to object'. The document further states that 'objecting to the sharing may have the potential to undermine an individual's claim and so claimants will need to be advised about the possible adverse consequences of objecting to information sharing'. The Information Commissioner's view is that consent is not appropriate where it cannot be freely given and where the data sharing is to take place regardless of the wishes of an individual or where a sanction could be imposed if agreement is not forthcoming. In this context it is also important to clarify that there is no legal opt out under the DPA but any such arrangements should be as transparent as possible and that individuals affected should be aware that the processing will be taking place.

Paragraph 2.8 of the consultation document states that further expansion of UC will provide the opportunity to build a secure platform for the introduction of Universal Support by mobilising local partnerships nationwide and putting in place a robust infrastructure ready for all claimant groups. The DPA requires organisations to have appropriate technical and organisational measures in place when sharing personal data. This will be particularly important here with the number and range of agencies that will be responsible for delivering services through Universal Support. We recognise that whilst organisations may be familiar with protecting information they hold themselves, establishing appropriate security in respect of shared information may present new challenges. We understand also from our contacts in the Third Sector that many experience difficulties in achieving investment in a secure IT provision. The Department may need to consider how to support organisations involved in this data sharing so that people's information can be protected and kept secure.

In conclusion, the Information Commissioner has a number of concerns relating to the translation of the regulation into the data sharing policy and procedure to be adopted and put into effect by the range of agencies and service providers included in the Universal Support initiative. We would expect the Department to take the lead in issuing



Information Commissioner's Office

appropriate guidance to both provider organisations and also UC claimants. The Information Commissioner recommends that the Department engages with and keeps his Office informed of the development of necessary guidance and the process for monitoring and reviewing the effectiveness of the data sharing in delivering Universal Support to UC Claimants.

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