Upholding information rights

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The Information Commissioner's response to the Department of Work and Pensions' consultation on the health and disability green paper

About the ICO

The Information Commissioner has responsibility for promoting and enforcing the UK General Data Protection Regulation ('UK GDPR'), the Data Protection Act 2018 ('DPA'), the Freedom of Information Act 2000 ('FOIA'), the Environmental Information Regulations 2004 ('EIR') and the Privacy and Electronic Communications Regulations 2003 ('PECR'). She is independent from government and upholds 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 she can, and taking appropriate action where the law is broken.

Introduction

The Information Commissioner's Office (ICO) welcomes the opportunity to respond to the Department for Work and Pensions (DWP) consultation on the Health and Disability Green Paper. The ICO acknowledges how data can be used in novel and innovative ways to improve the experience people have of the benefits system as well as supporting disabled people and people with health conditions to achieve their full potential.

The ICO supports the processing of personal data necessary to achieve goals set out within the consultation, provided that it is carried out in manner that is compliant with data protection legislation. The individuals to whom the personal data relates are likely to be deemed vulnerable due to their disability/health condition and potentially their financial situation. As such, great care must be taken when processing their data to ensure it is done in a fair and transparent manner. The below response sets out data protection considerations to take into account when developing proposals, which will minimise the risk to potentially vulnerably data subjects and enhance trust and confidence in how their data is being used, particularly by public authorities.

When considering the options to addressing some of the short-to medium-term issues in health and disability benefits, this response will focus on the areas of the consultation that fall within the ICO's remit, including but not limited to, the gathering of medical evidence to enable health assessments and further

digitisation of various aspects of the benefit system, including the continued use of video assessments. Whatever form future proposals take, the ICO recognises it is likely that data sharing will be required. Data protection is not a barrier to this, but rather it provides a framework through which organisations can share personal data fairly, securely and proportionately.

Special category data

The ICO supports the processing of data to assist disabled people and those with health conditions. However, where use of such data includes personal data, any processing must comply with data protection legislation. Achieving the overall objectives of the Green Paper will necessitate the processing of data concerning claimants' health, which the UK GDPR defines as special category data. Further protection is needed for this and any other special category data that will be processed as a result of the Green Paper due to its sensitive nature, as its use creates significant risks to data subjects' fundamental rights and freedoms.

In order to lawfully process special category data, in addition to determining a lawful basis under Article 6 of the UK GDPR, a separate condition for processing under Article 9 must be identified. Some of the 10 conditions under Article 9 require controllers to meet additional conditions set out in Schedule 1 of the Data Protection Act 2018 (DPA 2018). Some of the conditions for processing under Schedule 1 also require an appropriate policy document to be in place[1].

Legislative consultation

Section 214 of the consultation notes some of the longer-term amendments to future health assessments will require changes to legislation. Section 204 of the consultation also confirms legislation will be taken forward to alter the six-month rule with regards to terminally ill claimants. These appear to be the only sections of the consultation that make specific reference to changes in legislation; however, it is likely that further legislative changes will be necessary to progress proposals that result from the Green Paper. If any of the resulting legislative proposals relate to the processing of personal data then DWP will need to consult with the ICO during the formative stages of such initiatives.

Article 36(4) of the UK GDPR requires government departments and relevant public sector organisations to formally consult with the ICO during the

[1] Special category data | ICO

preparation of policy proposals for statutory or legislative measures that relate to the processing of personal data. DCMS have provided guidance on the application of Article 36(4)[2].

Data Protection Impact Assessments (DPIA)

It is very likely that some proposals that result from the green paper will require DWP to carry out a DPIA. Article 35 of the UK GDPR obligates controllers to undertake a DPIA where processing is likely to result in high risk to the rights and freedoms of individuals. A DPIA is a useful tool that controllers can, or in certain circumstances must use to identify and minimise data protection risks to data subjects. The ICO has produced guidance which details when controllers are legally required to undertake a DPIA and how they should be carried out[3].

Article 35(3) of the UK GDPR sets out three types of processing which always require a DPIA. Article 35(3)(b) requires organisations to undertake a DPIA if they plan to process special category data (or criminal offence data) on a large scale. Given the nature of the consultation, many of the proposals that result from the Green Paper will likely necessitate the processing of health data relating to a large number of claimants, and as such, will likely fall within scope of the aforementioned processing operation under Article 35(3)(b). In such instances a DPIA will need to be undertaken before any processing is carried out.

There are also European guidelines[4] which list nine criteria of processing operations likely to result in high risk. Whilst this is no longer binding under UK law, it may still provide helpful guidance when considering what constitutes high risk. As required under Article 35(4), the ICO has also published a separate list of processing operations that require a DPIA, which complements and further specifies the criteria referred to in the European guidelines. Some of these operations require a DPIA automatically, and some only when occurring in combination with one of the other items within the ICO's list, or with any of the European Guidance criterion. Even where proposals resulting from the Green Paper only involve one processing type from the Article 35(4) list that does not require an automatic DPIA, controllers should consider for themselves in their particular case whether this is sufficient to necessitate a DPIA, taking into account the nature, purpose, context and scope of the proposed processing.

[2] Guidance on the application of Article 36(4) of the General Data Protection Regulation (GDPR)
[3] Data protection impact assessments | ICO
[4] European guidelines on DPIAs and determining whether processing is likely to result in high risk

If high risk is identified via a DPIA, and it cannot be sufficiently mitigated, the controller is legally required to consult with the ICO under Article 36(1) of the UK GDPR prior to the high risk element(s) of the processing being carried out. The ICO will give written advice within 8 weeks, or 14 weeks in complex cases.

Proposals for future health assessments and data minimisation

The ICO recognises the desire to gather better quality evidence at an earlier stage in the decision making process to support WCA and PIP assessments, as expressed by disabled people and people with health conditions, amongst other stakeholders, in section 191 of the consultation.

Chapter 4 of the consultation looks at the potential for making longer term changes to future health assessments to support better outcomes for claimants. Sections 240-245 of the consultation looks at the role that medical evidence plays in health assessments and enquires what type of evidence would be most useful for making decisions following a WCA or PIP assessment.

It is not the ICO's place to dictate what medical evidence DWP should be gathering to support assessments. As the controller, DWP is best placed to determine this. However, there are a number of data protection considerations to take into account when determining what evidence to collect; in particular, data minimisation.

The data minimisation principle under Article 5(1)(c) of the UK GDPR requires that any data being gathered and subsequently processed must be adequate, relevant and limited to what is necessary in relation to the purpose for which they are processed. This is a key consideration to take note of when contemplating what medical evidence to gather for the purpose of supporting health assessments and ultimately progressing claims.

This section of the consultation also enquires if there is any way to standardise the evidence gathering process. Data minimisation requires that the personal data must be limited to what is necessary in relation to the purpose for which it is being processed. If, for example, DWP is considering standardising this process by requesting the same medical evidence in all cases, then the department would need to identify the bare minimum amounts of data needed to support assessments and progress claims in all cases. The ICO recognises that each claimant's situation is unique to them and it may not be possible to identify the standard minimum categories of data sufficient to progress claims in all cases. As

such, DWP may wish to consider gathering this baseline minimum data in the first instance and then providing individuals with the option to provide supplementary information if they wish. This means a standardised approach could be applied to all cases in terms of the minimum baseline data needed to progress claims, but a case-by-case approach could then be applied to cases that require further information. The consultation does not seem to distinguish between the medical evidence the claimant has to provide and the information DWP wish to seek from other sources, such as medical practitioners. DWP should provide clarity and follow up on further information it requires, rather than applying a blanket approach for requesting large amounts of data from several sources.

Sections 242 and 243 of the consultation highlight that a fit note is the most common form of evidence used by people receiving UC or ESA. A fit note may just clarify if a claimant is or is not fit for work but the request for medical evidence, from GPs for example, will likely result in the provision of special category data. Given the sensitivity of such data, it is important to ensure its processing is necessary if taking a standardised approach to gathering data.

As well as being limited to what is necessary, another key aspect of Article 5(1)(c) is that data must be relevant to the purpose for which it is being processed. As highlighted in section 218 of the consultation, feedback during Green Paper events suggested some claimants felt assessments often covered things that were not relevant to a person's condition or circumstances. The ICO recognises it may be difficult to assess relevance early on during the benefit process as the DWP may not know what requested information is relevant until they assess the case and understand the individual circumstances of each claim. However, the department must at least be able to demonstrate why such requested data is likely to be relevant to a particular claim.

The consultation explicitly asks how DWP can make sure that the evidence collected before a WCA or PIP assessment is relevant to a person's ability to do certain things. Again, it would not be appropriate for the ICO to comment on what data is and is not relevant, and the controller would be best placed to determine this. However, when assessing relevance the controller must consider the rationale behind linking the data to the purpose for which it will be processed. In particular, the controller should consider if past conditions, such as a claimant's broken leg when their current claim relates to mental health issues, are relevant to a current claim. Even current conditions or medication may not be relevant, such as details of contraception.

When making changes to the health assessment process, particularly where such changes involve greater data sharing, DWP should consider the impact on GPs and other areas of the health sector who may take issue with the new process unless it translates well across a range of different systems, such as the ones used in the NHS.

These data minimisation considerations may also apply to several other parts of the consultation. For example, sections 234-239 enquire what changes should be made to the PIP and WCA descriptors that make up the assessment criteria. When linked to data subjects, these descriptors will likely constitute personal data. When linked to individuals, DWP will need to consider if the potential descriptors are adequate, relevant and limited to what is necessary to carry out assessments.

The ICO note that many claimants feel the current process is prolonged and stressful. The ICO recognises DWP's desire to rectify this by altering the current health assessment system to a more strategic, streamlined and simplified process. Data protection does not present a barrier to achieving this. When developing a standardised approach DWP may wish to map out the different avenues through which they receive evidence, including GPs and the claimants themselves, to identify ways to make the processing more efficient.

Transparency information

Transparency is a legal requirement under Article 5(1)(a) of the UK GDPR and a key component of fairness. As well as asking what medical evidence the DWP should request to support health assessments, the consultation enquires if evidence should be sought from other sources such as healthcare professionals and support organisations. It is not the ICO's place to comment on this as it is a matter of policy for DWP. However, when DWP determine what evidence to seek and from whom, in addition to ensuring data minimisation, clear and comprehensive information on how personal data will be processed, known as privacy information, must be provided to data subjects in order to meet transparency obligations.

Section 223 details a set of objectives for assessment reform which includes building trust through transparency and consistency. Complying with transparency obligations under data protection legislation is an important aspect of engendering public trust and confidence in how data is being processed, particularly if it relates to people with disabilities or health conditions.

The provision of privacy information is also a right under Articles 13 and 14 of the UK GDPR, known as the right to be informed. The privacy information that must be provided will vary depending on whether it is being obtained directly from the claimant or from other sources, such as healthcare professionals. The ICO has produced further guidance on the right to be informed, including a summary of the privacy information controllers must provide[5].

It is likely that DWP's existing privacy information will eventually need to be updated to take account of proposals and future processing that results from the Green Paper. To take the redesign of the assessment process as an example, it seems likely that the privacy information will need revising to reflect the additional categories of personal data that may eventually be requested in terms of medical evidence, as well as the source of such personal data (unless sourced from the data subject themselves) whether from healthcare professionals, support organisations or other parties. It is vital that DWP is transparent with the claimant in this regard. DWP may also wish to be clear where it would not seek further medical information from other sources such as healthcare professionals, particularly where claimants are likely to be under the impression that the department would.

Under both Article 13 and 14, organisations are required to specify the recipients or categories of recipients of personal data, meaning any controllers from whom DWP source medical evidence from will need to update their own privacy information to take account of such disclosures.

It is often effective to provide privacy information using a variety of different techniques. These include dashboards, layering and just-in-time notices. More information on this as well as other aspects of the right to be informed can be found in the ICO's detailed guidance[6].

In general, DWP may wish to be more transparent with claimants in the first instance regarding the process by which a health assessment decision is made and what data the decision is based on. This may reduce the volume of queries or individual right requests DWP receives following assessment decisions.

Controllership and data processing arrangements

[5] Right to be informed | ICO
[6] The right to be informed | ICO

As noted in the above section, the consultation has sought feedback on the possibility of seeking further medical evidence from other sources such as health professionals and support organisations. At this early stage, it is not clear what the relationship between DWP and these other organisations would be in relation to the use of such data to support assessments and progress claims.

Other parts of the consultation allude to the possibility of further data processing arrangements between DWP and other bodies. For example, section 44 notes following Green Paper event feedback that the support DWP offer could be better joined up externally with services offered by other government departments and agencies, the NHS, local authorities and charities. If attempts are made to better join up these services, this would presumably involve the sharing of data between different bodies.

When entering into future data processing or data sharing arrangements that result from the Green Paper, DWP must clearly establish their relationship with the other organisation(s) involved from the outset and ensure clarity of controller, joint controller and processor roles and responsibilities as required by Article 24-29 of the UK GDPR[7].

If the above or other future proposals require DWP to enter into joint controllership with other bodies, a transparent arrangement must be put in place in accordance with Article 26 of the UK GDPR. Data sharing agreements (DSA) can be used to help controllers put such arrangements in place. When sharing data as a separate controller it is good practice to set up a DSA with other controllers involved, as recommended by the ICO's Data Sharing Code of Practice[8]. A DSA should clearly set out the various roles and responsibilities of each party, such as clearly outlining what each party should do in the event of an individual rights request under the UK GDPR. Whether a joint or separate controller, in addition to the right to be informed, DWP must consider the claimant's other data rights under Articles 12-22 of the UK GDPR and how to facilitate them.

If DWP enter into controller-processor relationships both parties must establish a written contract that meets the minimum standards as set out under Article 28 of the UK GDPR[9], or update existing contracts to take account of any new arrangements that result from the Green Paper.

[7] Controllers and processors | ICO
[8] Data sharing: a code of practice | ICO
[9] Contracts | ICO

Data minimisation and storage limitation

Chapter 3 of the consultation looks at making improvements to the current service. Parts of this chapter appear to propose processing less data than under the current system. For example, sections 179-184 propose reducing the number of repeat assessments disabled people must go through where a person's condition is unlikely to change. This would be likely to reduce the processing of data relating to those individuals. If the same objective of progressing claims can be achieved by processing less data, this would appear to align with the data minimisation principle, as data must be limited to what is necessary for the stated purpose. However, data minimisation also requires that data be 'adequate', meaning the controller must be satisfied that the data they have processed from previous assessments up to this point is sufficient to fulfil the stated purpose. Consideration of these two aspects of the data minimisation principle should be carefully balanced to ensure processing is fair and proportionate to the claimant.

Similar considerations should be taken into account when deciding whether to gather less data from people in the Severe Disability Group (SDG). As part of a simplified process, section 207 proposes that people within the SDG will no longer need to complete a detailed application form or go through an assessment. Similar considerations should also be given regarding the proposal to make decisions in straightforward cases without the need for an assessment with, and recommendation from, a healthcare professional, as noted in section 173.

Section 181 notes that repeat assessments on ESA/UC have stopped entirely for people with the most severe and lifelong conditions that are not likely to change. If so, consideration should be given to the retention of personal data relating to such individuals. The storage limitation principle under Article 5(1)(e) of the UK GDPR specifies that data must not be held for longer than is necessary in relation to the purpose for which it is processed. If DWP is satisfied that the condition of certain individuals is not going to improve then the department should consider if it is still necessary to retain all their personal data that has been gleaned from previous assessments and other sources, as the purpose of processing such data was to assess their condition to determine benefit entitlement. Practically speaking, the ICO recognises that some data will need to be retained, such as a minimal record as to their status and information necessary to provide the individuals with benefit payments.

Any other use of personal data that results from this Green Paper will also be subject to the storage limitation principle, meaning it is important to update existing appropriate retention policies to reflect any subsequent processing, in particular, where this involves new categories of personal data. It is important that such retention policies are reviewed regularly, as appropriate, taking the context of processing into account[10].

The retention of data for longer than necessary also has implications for the lawful basis under which data is processed. Most lawful bases under Article 6 of the UK GDPR require that processing is necessary for the specific purpose. As such, retaining data for longer than it is needed is likely to reduce or limit the valid lawful bases DWP can rely on to process data, including 'public task' and 'legitimate interests'. Holding on to data for too long also risks such data being used in error or becoming inaccurate, out of date, excessive or irrelevant in contravention of the accuracy and data minimisation principles. It is important to erase or anonymise unnecessary data in order to reduce such risks.

Digitisation of services

The consultation makes several references to either digitising aspects of the benefit system, or extending digitisation to services that are already online to some extent. This includes, but is not limited to, developing fully digital versions of the UC50 and PIP2 forms, along with the online New Style ESA claim service already introduced (section 82), making 'Access to Work' a fully digital service (section 110) and providing access to employment support digitally (section 150).

When digitising services it is important to 'bake in' data protection from the outset by adopting a 'data protection by design and default' approach. Please see the below 'accountability' section for more information. It is also important that data is stored, accessed and transmitted in a secure manner across the various online platforms. Security must be a key consideration throughout this process. The integrity and confidentiality principle under Article 5(1)(f) of the UK GDPR states that robust organisational and technical measure must be put in place to ensure the integrity of personal data when, for example, PIP2 forms are being automatically uploaded, stored and accessed on the online platform. Solutions DWP may wish to consider when protecting the security of data would include role-based access controls and privacy-enhancing technologies (PETs). The ICO

[10] Principle (e): Storage limitation | ICO

has produced guidance on security[11] that may be of use when considering what other security measures to implement when digitising various services.

At this stage the consultation does not provide much detail on how, or whether, customers will be able to express their preferred method of using the various services which are moving to online platforms. It is important to consider unintended consequences of greater data sharing through digitisation, such as making certain individuals or groups less likely to access a service, despite being entitled to the benefits offered. Online services may not be appropriate for all users, such as those who are not computer-literate or do not have regular access to digital devices or the internet, and steps must be taken to accommodate these individuals' needs when migrating to online platforms. The ICO recognises this may have already been considered given the commitment to provide non-digital alternatives noted within the consultation. The ICO also recognises the holistic approaches that are being proposed such as offering alternatives for those that cannot access online forms, and offering employment support as part of a mixed offer combining digital and face-to-face options. The ICO recommends that such flexibility is also considered when digitising other aspects of DWP's services. However, it is not clear from the consultation if individuals who would prefer to maintain non-digital methods, such as filling out and posting physical forms, will be able to raise this prior to the digitisation of services, or if they will have to opt-out after the fact.

Section 170 of the consultation references plans to develop an integrated health assessment service that will bring assessments for UC, ESA and PIP into a single, digital system. The same security and accessibility considerations detailed above should be taken into account when developing the integrated service. This section goes on to explain that where people are willing to provide consent, the new system will enable DWP to share medical evidence more easily. It is important here to make a distinction between an individual providing their permission for DWP to share their data via the digital platform, and a controller relying on the Article 6(1)(a) consent lawful basis, under which to process that individual's data online. It is only appropriate to rely on consent where the controller can offer individuals genuine choice and control over how their data is used, rather than giving them choice over whether they would prefer their data to be shared digitally. In other words, the consent must be freely given.

Organisations, such as the DWP, who are in a position of power over individuals may struggle to show valid freely given consent. Recital 43 of the UK GDPR

[11] Security | ICO

states it is unlikely that consent will be freely given in all circumstances where there is a clear imbalance of power between the data subject and the controller. Claimants may be concerned that refusing consent may adversely impact the benefits they are receiving, and hence, feel compelled to consent. Public authorities such as the DWP should avoid relying on consent unless confident they can demonstrate it is freely given.

The ICO supports the improvements and modernisation of its services through further digitisation, provided it is carried out in a secure manner that complies with data protection legislation. In particular, DWP may wish to consider how further digitisation could better facilitate data subjects in exercising their individual rights.

ICO's Regulatory Sandbox

Sections 170-172 explain that the integrated health service referenced in the above section will be developed through DWP's Health Transformation Programme (HTP). The integrated service will develop on a small scale to begin with in a small area called the Departmental Transformation Area (DTA). The first DTA location was launched in London on 21 April 2021. The consultation states that the full scale of what these areas can achieve is still developing. Those working on projects being developed by the HTP and/or DTA may be interested in the ICO's Regulatory Sandbox.

The ICO's Regulatory Sandbox[12] is a service that supports organisations creating products and services which utilise personal data in innovative and safe ways. The sandbox is a free service which provides organisations with access to ICO expertise and can increase confidence in the compliance of a finished product or service. The sandbox is currently open to take on new participants for 2021/22 with a particular focus on innovations involving data sharing from central government departments, amongst other sectors, and the use of innovative technology[13]. If the HTP and/or DTA are planning to develop innovative products or services that fall within this criteria, details on how to apply can be found on the ICO website[14].

Automated processing and children

[12] Regulatory Sandbox | ICO
[13] Our key areas of focus for the Regulatory Sandbox 2021-22 | ICO
[14] How can we apply to the Sandbox? | ICO

The consultation does not make any mention of automated processing, and it is unclear if any initiatives, products or services that will result from the Green Paper would involve solely automated processing as defined in Article 22 of the UK GDPR. If any processing results that does fall within the scope of Article 22, it is important to note that individuals have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal or similarly significant effects concerning the individual. Controllers can only proceed with such processing where one of the three exceptions set out in Article 22(2) applies. DWP must be transparent with data subjects where such processing is carried out. In such instances the privacy information it provides must be updated accordingly to include details of the existence of automated decision-making, including profiling.

Where third parties are contracted to process data on behalf of the department, and this involves automated decision-making, DWP should be confident it understands the processing involved and could identify any errors or inherent bias within the system.

The ICO has produced detailed guidance on the data protection requirements when using solely automated processing[15].

DWP must also ensure particular care where any automated processing involves children. There is a brief part of the consultation between sections 198-201 which covers people moving between child and adult benefits. It gives the example of young people claiming Child DLA being invited to apply for PIP at the age of 16. It is important to note that the United Nations Convention on the Rights of the Child (UNCRC) defines a child as a person under the age of 18 years. Recital 71 to the UK GDPR makes it clear that decisions based on solely automated processing, including profiling as described above, 'should not concern a child'. Profiling is also mentioned in Recital 38 to the UK GDPR as an area in which children merit specific protection with regard to their personal data. As under 18s are considered children under the UNCRC, DWP should consider how the data of 16 and 17 year olds can be protected.

In general, and where applicable, DWP should be designing their processes with the needs of children in mind, with the principle of 'the best interests of the child[16] and the fairness principle under Article 5(1)(a) of the UK GDPR as key considerations. DWP would also need to ensure that privacy information provided

[15] Automated decision-making and profiling | ICO
[16] Convention on the Rights of the Child

to children is appropriately written so that they understand how the DWP use their data, and what data rights they have.

Video assessments

Section 172 notes that action is being taken by the HTP to test video assessments through the integrated health assessment service. We understand that during the pandemic DWP have had to introduce assessments by video call, and by telephone, as face-to-face assessments could not be carried out. However, as society returns to normality it is important to assess the data protection implications of further rolling out video assessments in a *business as usual* context. In particular, security will be a key consideration when carrying out video calls, as it will for telephone assessments, the latter of which DWP plan to evaluate as noted in section 175.

Section 177 confirms that over 750 data subjects have already gone through a video assessment as part of a test and, subject to an evaluation, plans are being progressed to increase the number of video assessments as part of a pilot. DWP must consider proportionality when deciding to carry out such assessments.

When determining if the use of video assessments is proportionate, DWP should consider if its purpose is sufficiently important to justify any privacy intrusion that results from the call. Data subjects may feel that having part of the interior of their home potentially on display to the assessor in the background much more intrusive than just speaking on the phone. This should be carefully balanced against the needs of claimants, for some of whom video assessments may be more appropriate than in-person or telephone assessments. It is also important to consider and mitigate against the possibility of some claimants feeling pressured into accepting video assessments despite reservations they may have around privacy intrusion, as they fear declining may adversely impact their claim.

It is not clear from the consultation if video assessments will be recorded. Section 172 confirms DWP have started offering audio-recordings for telephone assessments and some face-to-face assessments to help improve trust in decisions. If video assessments will be recorded, consideration must be given to the storage limitation principle, as it should be for recordings of telephone and face-to-face assessments. If video calls will be recorded, the Department should consider if it is necessary to record the visual element of the assessment, and if just recording the audio would be sufficient.

Accuracy of data

The ICO recognises the desire to increase the accuracy of decisions made on benefit entitlement as noted within section 10 of the consultation. Complying with the accuracy principle under Article 5(1)(d) of the UK GDPR, which requires that data remains accurate and up to date, is key to achieving this goal[17]. This is particularly pertinent regarding the further digitisation of services as described above, where considerations relating to the accuracy of data being stored, transmitted and accessed on online platforms must be taken into account. In particular, regard needs to be given to the accuracy of data used to digitally verify claimants on these platforms.

Feedback from Green Paper events suggests some claimants have concerns over the accuracy of data being recorded, particularly during health assessments. Section 160 notes that some felt assessment reports were not always accurate and could lead to poor decisions being made. Section 218 highlights claimants who felt their responses during assessments had not been accurately recorded and the process did not take into consideration how conditions can change over time. Such feedback highlights the importance of Article 5(1)(d), as decisions based on inaccurate or out of date data could have significant detrimental effects on individuals, such as adversely impacting their receipt of benefits or being unfairly sanctioned. As such, it is vital that steps are taken to ensure data is kept accurate and up to date, and to rectify or remove any inaccurate data without delay. Ensuring accuracy may also reduce the number of appeals and rectification requests DWP receives following an assessment decision.

Accountability

The accountability principle under Article 5(2) of the UK GDPR makes it clear that controllers are responsible for complying with the other data protection principles under Article 5(1), and they must also be able to demonstrate such compliance. For example, being able to demonstrate that the medical evidence being requested is limited to what is necessary to carry out a health assessment and progress a claim. Controllers need to put in place measures to meet the requirements of accountability, including carrying out DPIAs where there is high risk to data subjects as detailed earlier. We recommend DPIAs as good practice.

[17] Principle (d): Accuracy | ICO

Another measure the ICO would like to highlight is adopting a 'data protection by design and default' approach[18] which will enable effective implementation of the principles and safeguarding of individual rights. This approach requires organisations to 'bake in' data protection into processing activities from the outset. Taking this approach will ensure that DWP consider privacy and data protection issues at the design phase of any system, service, product or process that results from the Green Paper, including the potential digitisation of services detailed above or the possibility of creating a single assessment process for a new single benefit as noted in section 299. These data protection considerations must then continue throughout the lifecycle of such systems, products or services.

The consultation highlights the importance of building trust and confidence whether that be in the assessment process or the quality of decision making. Accountability is a vital to engendering public trust and confidence, and the ICO has published an accountability framework[19]to aid organisations in demonstrating their compliance.

Proposals and pilots with healthcare and other services

As well as future systems, services, products or processes that may result from the green paper, the consultation also describes specific proposals or pilots, some of which have already commenced. When commencing or progressing such proposals, regard should be given to the data protection considerations described throughout this response. Specific proposals have been highlighted below, accompanied by particular data protection considerations that should be taken into account.

Sections 126 and 127 describe the introduction of Health Model Offices which, amongst other aims, seek to improve links between jobcentres and health services by basing healthcare professionals in job centres and work coaches in GP surgeries. The data sharing between different organisations that is needed to carry out such initiatives will result in several data protection implications which need to be fully considered. In particular, it will be vital to clearly establish the relationship between these different organisations to clarify controller, joint controller and processor roles and responsibilities, and put in place any necessary arrangements or contracts as described earlier. Again, the ICO would advise taking a 'data protection by design and default' approach and providing adequate

[18] Data protection by design and default | ICO
[19] Introduction to the Accountability Framework

privacy information regarding the initiative to ensure transparency. DWP should also consider whether potentially vulnerable individuals may feel obliged to participate in the initiative.

Along similar lines, section 144 describes how the DWP are continuing to provide employment support in health settings and lists specific initiatives that have been carried out. The ICO acknowledges the potential benefits of such joined up services but the same data protection matters as described in the previous paragraph must be carefully considered. It also seems likely that future initiatives which combine work and health services would require a DPIA, as would the specific initiatives listed in section 144. A DPIA must be kept under review and updated as appropriate following significant changes to initiatives.

Section 252 explores the possibility of using a Health Impact Record (HIR) which would enable people to record the impact of their condition throughout their claim via a method of ongoing self-assessment. This seems to be a significant proposal, and it appears to suggest the record will be held by the claimant, rather than the DWP or another body, but the DWP may wish to clarify this point. Again, it is vital that controller/processor arrangements are clearly established and a 'data protection by design and default' approach is taken from the outset as this proposal may raise several implications regarding the sharing of data between DWP and other bodies such as health professionals. Of particular importance will be ensuring adequate security of the data being logged in the HIR. DWP must also be satisfied that the data recorded by the data subject accurately reflects the ongoing condition of the claimant, though the ICO recognises that others, such as healthcare professionals, could potentially contribute to the HIR as well. Steps must be taken to ensure that data within the HIR is kept up to date and accurate, particularly where there is a change in the data subject's condition. Inaccurate data must be corrected or removed without delay and the ICO has produced guidance on the right to rectification[20] and erasure[21].

A further proposal which may also have significant implications, requiring further detailed considerations as described above and throughout the ICO's response, is the development of the Access to Work Passport detailed in section 111 which will be continually updated to support disabled people moving into employment.

Conclusion

[20] Right to rectification | ICO
[21] Right to erasure | ICO

The ICO is happy to provide further input on the matters raised above and welcomes further engagement from DWP on any proposals that result from this Green Paper. The ICO also look forward to receiving any Article 36(4) consultations that result from the proposed introduction of, and/or changes to, legislation.

Information Commissioner's Office

2021/10/11