



Information Commissioners Office
(ICO)

**GDPR consent
Guidance Consultation**

NAWRA Response
March 2017

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The National Association of Welfare Rights Advisers (NAWRA)

1. The National Association of Welfare Rights Advisers (NAWRA) was established in 1992 and represents advisers from local authorities, the voluntary sector, trade unions, solicitors, and other organisations who provide legal advice on social security and tax credits. NAWRA currently has more than 240 member organisations.
2. We strive to challenge, influence and improve welfare rights policy and legislation, as well as identifying and sharing good practice amongst our members.
3. NAWRA holds a number of conferences throughout the year across the UK, attended by members from all sectors of the industry. An integral part of these events are workshops that help to develop and lead good practice.
4. Our members have much experience in providing both front line legal advice on benefits and in providing training and information as well as policy support and development. As such NAWRA is able to bring much knowledge and insight to this consultation exercise.
5. NAWRA is happy to be contacted to provide clarification on anything contained within this document. NAWRA is happy for details and contents of this response to be made public.

Purpose of this response

The General Data Protection Regulation (GDPR) will apply in the UK from May 2018 and replaces the Data Protection Act 1998 (DPA). ICO is currently running a consultation on the new GDPR guidance published by ICO. This response sets out the concerns of NAWRA members.

Methodology

All member organisations were sent a survey via email. The survey was designed to address the specific aspects of the ICO's inquiry with matching questions. We had 86 responses in all which is about a third of our membership.

Our views

1. Is the draft guidance clear and easy to understand?

Yes

No

Please explain why not:

There was a wide range of opinions on this issue and **56%** of members **disagreed** that the guidance was clear with 44% saying it was clear. The largest reason stated for lack of clarity was due to a pervading perception of the guidance being filled with jargon. For example, a number of members complained that use of the term '*granular*' was highly ambiguous in meaning. One member stated:

"Too much detail without explaining jargon used or giving examples. Eg, what is 'granular' consent?"

The point is a fair one. The term granular, though in context is clearly intended to mean 'specific', has, in places, been communicated in confusing ways:

"... separate consent will be needed for different processing operations wherever appropriate – so you need to give granular options to consent separately to separate purposes, unless this would be unduly disruptive or confusing.

This seems understandable.. but then the paragraph continues:

*..As a minimum, consent must **specifically cover all purposes.**"*

It is unclear how something 'granular' or 'specific' can also cover *all* purposes. Examples given did not really help clarify the term either.

There were also other areas of confusion around terms such as 'unambiguous', or 'affirmative action'. These terms seem related to the concept of explicit consent which is readily understandable by advisers, [cf, page 24, GDPR Guidance].

However, it remains unclear why existing and well known terms like this were substituted in places with new, abstract terms. Other terms were also problematic, such as 'independent processing operations', 'preference-management tools', and 'privacy dashboard', which were further examples of jargon. This issue was not throughout the document, hence the split in

opinion, but in places these issues definitely obscured the meaning of the text.

NAWRA recommends using simpler language which reflects existing terms and language where possible. Technical terms should have clear explanations perhaps in a glossary with simple examples.

2. Does the guidance contain the right level of detail?

Yes

No

Please explain why not:

56% of respondents **agreed** that there was the right level of detail with 44% disagreeing. It is understood that the guidance must be generic in order to apply in a wide range of contexts. However, some members were concerned with the lack of specific guidance for support workers, advisers and advocates of clients with vulnerabilities. For example, one member stated:

"It should give examples of using this guidance in the context of providing advice and support to vulnerable clients"

It is welcome that there is, within the guidance, specific areas dedicated to dealing with *children* and those that may lack *capacity*. However, NAWRA is concerned that *vulnerable adults* were not treated with the same level of attention.

NAWRA members support vulnerable adults routinely. This group have particular difficulties communicating with officials and dealing with official processes and bureaucracy and often fall foul of these processes when they do not have intensive support. This can lead to serious deterioration in health and wellbeing or even death in extreme cases. Highlighting the need for vulnerable adults to be safe and treated with dignity and respect, a [report](#) published in 2014 from the Royal College of Speech and Language Therapists outlined:

"Good communication underpins all these outcomes. Most people with learning disabilities have some speech, language and communication difficulties. These can be hidden or overlooked. Everyone needs to know what good communication support 'looks like' and what reasonable adjustments they can expect."

Effective advice and advocacy is absolutely crucial in supporting vulnerable adults to communicate their needs effectively, securing access to basic sustenance and social justice.

NAWRA recommends that the guidance include best practice guidance for vulnerable adults. Specifically, this should reference a flexible approach by Government bodies when dealing with professional support agencies (e.g. advice agencies) and that Government bodies should continue to make effective use of implicit consent where not doing so would clearly jeopardise the data subject's health, wellbeing or other interests.

3. Do you have any examples of consent in practice, good or bad, that you think would be useful to include in the guidance?

Yes

No

Please outline your examples:

71% of members stated that they **did not** have examples of good or bad practice to give. However, some members did contribute their ideas and NAWRA would like to make some proposals.

As indicated already, the difficulty is that sometimes a vulnerable client needs immediate support from an adviser and there is no time to send off written consent which may take weeks to process (or often gets lost). Similarly, the client may not be present for some reason or another (e.g. they might suffer from social phobias and might have had a panic attack that day). In similar cases, advisers might need to check the progress of an application or contact the benefit office urgently to prevent or mitigate some form of punitive action.

The Department of Work and Pensions (DWP) make effective common-sense use of implicit consent which is underpinned by specific [guidance](#) entitled 'working with representatives'. However, recently practices have changed and this has been an increasingly prominent issue for advisers supporting claimants on Universal Credit (UC). For example, one member commented:

"When trying to help our tenant that are claiming UC it is almost impossible to speak to the DWP unless the tenant is present. Even when we use a consent form there is still resistance to speak about their claim. We only ever phone to help the tenant."

The reason why our members are facing these difficulties in supporting their often vulnerable clients is that there have been new developments with UC in how implied consent is applied (or rather not applied at all).

Mr Neil Couling, Director General of the Universal Credit Service recently confirmed that advisers/advocates cannot use implicit consent to assist claimants with UC queries where the claim is in a "full service" area. We already know that rent arrears are a huge problem with UC (due to the shift towards monthly payments). However, as is noted on the record by Alison

Johnstone MSP, in the [minutes](#) for the Social Security Committee 15th December 2016, this new development removing the vital principle of implicit consent from full service UC, may be causing needless risk of homelessness for many.

NAWRA is therefore concerned that official bodies like DWP might interpret this new guidance in ways that would create additional barriers of bureaucracy which impede natural justice and the best interests of vulnerable claimants of social welfare benefits.

The comments highlighted in this response make it clear that although NAWRA members in general support protection of data and best practice with data processing, there is wide spread uncertainty and concern that these new rules will be used by Government agencies to create barriers for their clients. As one member commented:

"Data protection is used by Public Authorities to hide information. GDPR claims this empowers the data owner. There needs more focus on the data owner and what is best for them rather than creating an even bigger firewall."

NAWRA recommends that the guidance include recommendations and examples where implied consent is acceptable, including, cases where the financial, mental or physical health or wellbeing of the data subject is at risk.

4. Does the guidance cover the right issues about consent under the GDPR?

- Yes
 No
If not what do you believe is missing?

62.5% of NAWRA members **agreed** that the right issues regarding consent were covered with 37.5% disagreeing.

Gaps have already been highlighted elsewhere in this response, particularly with regards to clear guidance for agencies dealing with and supporting vulnerable adults via implicit consent.

5. Please provide any further comments or suggestions on our draft guidance.

NAWRA understands that some of these issues are nuanced and complex. We would welcome specific queries from ICO with regards to any of the comments made herein. Please contact Eri Mountbatten eri@nawra.org.uk.