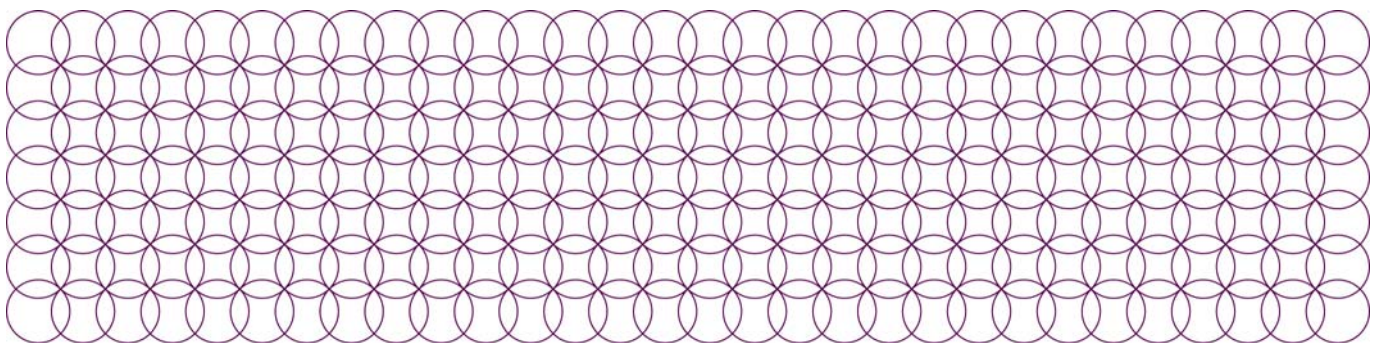


Information Gateway – Legal Aid

Privacy Impact Assessment Report



June 2011

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Section 1 – Executive Summary

Background

The Legal Aid, Sentencing and Punishment of Offenders Bill proposes the creation of an information gateway between those persons who determine financial eligibility for legal aid and the Secretary of State, the Commissioners for Her Majesty's Revenue and Customs, the Department for Social Development for Northern Ireland and the Department for Finance and Personnel for Northern Ireland. The specific purpose of the information gateway is to allow the sharing of relevant financial information in order to ensure the correct decisions are made about the grant of legal aid.

Findings

This PIA sets out that Clause 21 of the Legal Aid, Sentencing and Punishment of Offenders Bill provides an information gateway between the Director of Legal Aid Casework (or other prescribed person) and the Secretary of State (at present the gateway would apply to the Secretary of State for Works and Pensions) ("DWP"), the Commissioners for Her Majesty's Revenue and Customs ("HMRC"), the Department for Social Development for Northern Ireland and the Department for Finance and Personnel for Northern Ireland ("the Northern Ireland Departments"). This provision allows requests to be made for the disclosure of information, and for disclosures to be made, to enable or assist in the assessment of a person's financial resources, so as to ensure that they are financially eligible for legal aid (civil or criminal). The Bill provides the circumstances in which information disclosed may be further disclosed and creates an offence of unlawful disclosure. The processes and systems used in the handling of personal data will replicate the well-established and robust practices already used by the Legal Services Commission in its data sharing processes.

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Review Process

The data handling practices of the Director of Legal Aid Casework will be reviewed internally after the first full year of the operation of the gateway to ensure that they remain fit for purpose.

Section 2 – Introduction

Background

A Privacy Impact Assessment (PIA) is a process which helps assess privacy risks to individuals in the collection, use and disclosure of information. PIAs help identify privacy risks, foresee problems and bring forward solutions. The primary purpose of a PIA is to visibly demonstrate that an organisation acts responsibly in relation to privacy. The deliverables and benefits of undertaking a PIA can be summarised as follows:

- The identification and management of risk;
- Avoidance of unnecessary costs;
- Prevention of inadequate solutions;
- Avoiding loss of trust and reputation;
- Informing citizens and partners of the organisation's communications strategy;
- Meeting and exceeding legal requirements.

Objective

The objective of conducting this PIA is to identify any data protection issues with the proposed information gateway. It is important to remember that ultimately the focus of a PIA is compliance with the Data Protection Act 1998 ("DPA").

However, compliance with any other relevant legislation has to be considered.

Underlying principle

Data sharing and testing must be undertaken within a clear legal framework with any intrusion upon an individuals' privacy to be kept to a minimum. By undertaking a PIA we ensure this principle is met.

HMG requirement

The Data Handling Review, published in June 2008, states that all Departments will “introduce Privacy Impact Assessments, which ensure that privacy issues are factored into plans from the start, and those planning services are clear about their aims. Similarly, information risk management will be considered as part of the Government’s “Gateway” reviews that monitor progress of the most important projects”. The Data Handling Review has now been subsumed into HMG Information Assurance Standard No 6 – Protecting Personal Information and Managing Information Risk. Accordingly, PIAs are to be carried out on MoJ projects and policies that involve the processing of personal data.

PIA Process

The process for conducting a PIA is described by the ICO as follows:

1. Initial assessment (i.e. the Screening Process) – Examines the project at an early stage, makes an initial assessment of privacy risk and decides which level of assessment¹ is necessary. This has been undertaken and the subsequent report is referenced in this report.
2. Where necessary, conduct, either:
 - Full-scale PIA – a more in-depth internal assessment of privacy risks and liabilities. It includes the need to identify stakeholders, analyse privacy risks, consults widely with stakeholders on privacy concerns and brings forward solutions to accept, mitigate or avoid them; or
 - Small-scale PIA – Similar to a full-scale PIA, but is less formalised. Requires less exhaustive information gathering and analysis. More likely to be used when focusing on specific aspects of a project.
 - Review – Sets out a timetable for reviewing actions taken as a result of a PIA and examines their effectiveness. Looks at new aspects of the project and assesses whether they should result in an updated PIA.

¹ Full Scale PIA, Small Scale PIA or no PIA.

This report deals with the PIA for information gateways for civil and criminal legal aid.

Section 3 – Information gateway details

There are currently two different arrangements in place. There is a statutory gateway with DWP and HMRC in relation to criminal legal aid by virtue of paragraphs 6 to 8 of Schedule 3 to the Access to Justice Act 1999, the Criminal Defence Service (Information Requests) Regulations 2009 and the Criminal Defence Service (Information Requests) (Prescribed Benefits) Regulations 2009.

As regards civil legal aid applications, an arrangement exists not specified in statute whereby the Legal Services Commission (LSC) interface with the DWP by means of a 'secure email link' between the LSC's regional offices and Job Centre Plus in Glasgow. The information collected in this way can then be used to assess whether or not the applicant is financially eligible for legal aid. Where the LSC needs to contact HMRC to request information with the purpose of assessing an applicant's eligibility for civil legal aid, the LSC writes to the local tax office or tax credits office. On the means assessment form the applicant is informed that the LSC 'may receive information about you from certain third parties, or give information to them; these third parties include some government departments.' Further the applicant makes the following declaration: "I understand that the LSC may check my income and capital status with Her Majesty's Revenue and Customs (HMRC) and authorise HMRC to carry out such checks as are necessary to verify my financial status and give that information to the LSC".

System users

The new arrangement allows the Director of Legal Aid Casework (or other prescribed person) to request specific information from the DWP, HMRC and/or the Northern Ireland Departments and for the disclosure of information, to enable or assist in the assessment of a person's financial resources, so as to ensure that they are financially eligible for legal aid (civil and criminal). Applicants are aware that such checks may be undertaken and that additional financial information may be sought.

The personal data obtained will only be for specified lawful purposes, and will not be further processed in any manner incompatible with that purpose or those purposes. Specifically, the Legal Aid, Sentencing and Punishment of Offenders Bill makes provision for the restriction on disclosure of information about financial resources provided under clause 21. Under clause 32 of the Bill, the information may be disclosed where it is necessary or expedient in connection with facilitating a determination on a person's financial resources. Information may also be disclosed in accordance with an enactment, in accordance with an order of a court and for the purposes of proceedings before a court. The information may also be disclosed if it has been previously lawfully disclosed to the public. Clause 32 makes it an offence to disclose information other than in accordance with the Bill.

Description of data being checked

In practice, the Director of Legal Aid Casework (or other prescribed person) will act in a very similar way to the Legal Services Commission. In particular the Director (or other prescribed person) will make requests about whether a person is in receipt of particular benefits such as Income Support, Income-based Job Seeker's Allowance, Income-related Employment and Support Allowance, and Guaranteed State Pension Credit.

It is noted that the implementation of Universal Credit (UC) by DWP (assuming the successful passage of the Welfare Reform Bill) will have a significant potential impact on the financial assessment process for legal aid (and for civil legal aid in particular). Even though the UC system will not start to be introduced until April 2013, we have ensured that the statutory provision covers future information requests requirements with DWP (and HMRC).

A request for information made to DWP or a Northern Ireland Departments is a request for the disclosure of some or all of the following information relating to the person's:

- (a) full name (and any previous names);
- (b) address (and any previous addresses);

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- (c) date of birth;
- (d) national insurance number;
- (e) benefit status at any time specified in the request;
- (f) information of any description prescribed in regulations.

Likewise a request for information made to HMRC is a request for the disclosure of some or all of the following information:

- (g) whether or not the individual is or was, employed at any time specified in the request;
- (h) the name and address of the employer (if the individual is, or at that time was, employed);
- (i) whether or not the individual is, was, carrying on any business, trade or profession or at any time specified in the request (and, if so, any name under which it is or was carried on and the address of any premises used for the purpose of carrying it on);
- (j) national insurance number;
- (k) benefit status at any time specified in the request;
- (l) Information of any description prescribed in regulations with the agreement of HMRC.

The implementation of Universal Credit (UC) by DWP (assuming the passing of the Welfare Reform Bill) may have a significant potential impact on the financial assessment process for legal aid (and for civil legal aid in particular). Even though the UC system will not be introduced until April 2013, we have ensured that the statutory provision covers future information requests requirements with DWP (and HMRC).

Currently, the applicant for legal aid, and the applicant's partner if relevant, is asked to consent to the LSC checking facts with bodies such as the DWP and HMRC and to those bodies providing the information requested. As such, applicants are aware that such checks may be undertaken and that additional

financial information may be sought. Schedule 3 (6) to the Access to Justice Act 1999 allows information requests to be made in relation to criminal legal aid for the purposes of facilitating the making of a decision by the relevant authority, in relation to an individual's eligibility for legal aid. The Act allows disclosure of information in limited circumstances to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court; or to disclose any information which has previously been lawfully disclosed to the public.

Whilst the LSC can obtain information from other departments such as the DWP and HMRC if the applicant's consent has been obtained, there are several situations where consent may not be available. For example under both the civil and criminal legal aid schemes, the financial application form contains a declaration for the client and their spouse to sign allowing the LSC to request information from third parties. Difficulties have arisen in various cases where the client who applies for legal aid has signed the declaration but are unable to persuade their partner to sign the form. Further, a person may not be able consent due to disability, or they may refuse to provide consent in order to delay a court case, or withdraw consent to frustrate a financial investigation.

Data collection and privacy

The Legal Aid, Sentencing and Punishment of Offenders Bill places information requests in relation to civil legal aid on a statutory footing. Therefore, requests made to DWP, HMRC and the Northern Ireland Departments for the disclosure of information, to enable or assist in the assessment of a person's financial resources, to ensure that they are financially eligible, apply to civil as well as criminal legal aid. The benefits of speed, accuracy and enhanced management of information justify this change to be included in the Bill.

Personal data is fairly and lawfully processed in compliance with the first data protection principle. The legislation will provide a statutory basis for the sharing of personal data. Additionally, the system of verifying an applicant's financial eligibility seeks the data subject's consent to process their data in this

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way. However, in situations where it has not been possible to obtain consent we believe the proposed arrangement allows information to be obtained lawfully in compliance with the DPA, and allows for the legitimate processing of data to enable the exercise of the functions of the Director of Legal Aid Casework.

Organisational relationships, Technology employed:

The organisational relationships and technology employed in the information gateway aims to ensure that **personal data collected is accurate and, where necessary, kept up to date**. Only the specific data described above will be sought; again the data sharing provision in legislation will detail what data can be sought, the reason for which it is sought, and the restrictions on disclosure.

Measures are taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. Only the Director of Legal Aid Casework (or other prescribed person) will have access to the information which is password protected to prevent unauthorised access. Additionally, the data will be transferred on a secure network; all staff handling the data will have completed mandatory information assurance training; and specific guidance will be drawn up for staff handling this information to ensure they understand their obligations in respect of the relevant legislation. **Personal data processed for the verification of a person's eligibility for legal aid is not kept for longer than is necessary.** Data is scheduled to be deleted after three years – the Director of Legal Aid Casework will hold his or her files containing the funding decision for this period to demonstrate confidence in that funding decision.

Criminal legal aid:

Information is currently shared between the LSC and DWP through the Means Assessment and Appeals Tool (MAAT), a web based application used to record data about an individual's financial eligibility for criminal legal aid. The existing arrangements are described below and will be replicated between the Director of Legal Aid Casework and DWP, HMRC or the Northern Ireland Departments in future.

Users have to be authorised to use the system which is controlled by user names and passwords, the latter of which are changed regularly. Inactivity on the application is logged and an application is automatically closed out if there has been no activity for 30 minutes.

Welfare benefit information is verified by sending the applicant's surname, date of birth and national insurance number from the MAAT application server to DWP's Customer Information System (CIS) server (this is for identification purposes only). At the point that the check is done, there is an authentication process which confirms the authority to undertake the check. The information requested is only supplied if all three pieces of identification are matched with an applicant's record held on the DWP's CIS database. If the identification cannot be confirmed, DWP will simply return a response, which confirms that no match has been found. This process ensures that the personal data received is accurate and, where necessary, kept up to date.

Information shared between the LSC and both DWP and HMRC involves applicant details being entered into a spreadsheet that is then password protected. The spreadsheet is sent electronically to either HMRC or DWP using a secure email account and cannot be opened without the password. The password for the spreadsheet is agreed in advance and is not emailed. Both DWP and HMRC use the applicant details to match them to their own databases and once matched will add the information requested to the spreadsheet before e-mailing it back through the secure e-mail account. If an applicant cannot be identified, no information is supplied.

Staff use is monitored and audited (e.g. to stop a high profile defendant's details reaching the media). The LSC is required to ensure that users who no longer have a business need to access the information have their MAAT log-on and secure e-mail account de-activated. This is reviewed every month.

The spreadsheet is maintained in electronic format only and is saved on the LSC's server, which is protected by appropriate firewalls.

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This framework has been in place since late 2007 and no data protection issues have arisen. The secure e-mail system is used by other criminal justice agencies and is considered by all to be safe and secure.

Civil legal aid:

As regards 'civil' cases, an arrangement exists not specified in statute whereby the LSC interface with the DWP by means of a 'secure email link' between the LSC's regional offices and Job Centre Plus in Glasgow. The legislation will provide a statutory basis for the sharing of personal data, allowing personal data to be fairly and lawfully processed in compliance with the principles of the Data Protection Act.

Legislation and policies

As mentioned above, there is currently a statutory gateway with DWP and HMRC in relation to criminal legal aid by virtue of paragraphs 6 to 8 of Schedule 3 to the Access to Justice Act 1999, the Criminal Defence Service (Information Requests) Regulations 2009 and the Criminal Defence Service (Information Requests) (Prescribed Benefits) Regulations 2009. The Legal Aid, Sentencing and Punishment of Offenders Bill will place the data sharing arrangement with DWP, the Department for Social Development for Northern Ireland and the Department for Finance and Personnel for Northern Ireland, and HMRC regarding 'civil' cases, on a statutory footing, and for it to be wide enough to be used to routinely check financial eligibility for civil clients who make applications for funding for representation or equivalent levels of service to the Director of Legal Aid Casework.

The Ministry of Justice is committed to ensuring that its data handling processes are compliant with all relevant legislation. Once the system is in place, we intend to draw up a data sharing agreement with other Departments as a further protection of the personal data of the individual, to ensure that data is processed in accordance with the rights of data subjects under the Data Protection Act 1998 and the Human Rights Act 1998

There should be no reason for personal information to be disclosed outside of England, Wales and Northern Ireland. One possible exception is that clause 32 of the Bill allows for the disclosure of information, that is disclosed under clause 21 or clause 32, for the purposes of the investigation or prosecution of an offence (or suspected offence) under the law of England and Wales or Northern Ireland or any other jurisdiction ...'. If it were to become necessary for personal data to be transferred to a country or territory outside the European Economic Area, necessary safeguards will be in place to ensure that such **personal data will not be transferred unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.**

Section 4 – Data protection analysis and risk management plan

Stakeholders & participants, analysis process & summary, and risk management & mitigation:

As regards data sharing with DWP, the Department for Social Development for Northern Ireland and the Department for Finance and Personnel for Northern Ireland, and HMRC in relation to ‘civil’ cases, this process will replicate the process for assessing financial resources for criminal legal aid, therefore the benefits of speed, accuracy and enhanced management information will be applicable to the verification process in civil legal aid applications. We do not consider it necessary for the PIA to be subject to wide consultation. The data handling processes are subject to the Data Protection Act. In addition, the Legal Aid, Sentencing and Punishment of Offenders Bill makes express provision to restrict unauthorised disclosure of information by the relevant authority.

Section 5 – Communication

Communications

This PIA is also available on the Ministry of Justice website –
<http://www.justice.gov.uk>.

Section 6 – Approval of report

Approval of: **Darren Tierney**

Project / Policy / Initiative: **Civil information Gateway**

Policy lead/Business Sponsor/Project Manager: **Darren Tierney**

Information Asset Owner: **MoJ**

Date of approval: **9 June 2011**

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