

Data Protection Guidance for Engaging with the Strategic Insights Tool for Rough Sleeping

Purpose

Charities and service providers, along with local authorities, are asked to share personal data of clients in the **Strategic Insights Tool for Rough Sleeping**. The ambition is to develop an integrated rough sleeping data solution for local government and non-government service providers across London, to better understand client journeys, plan services, report trends, and manage performance.

We want rough sleeping to be rare, brief, and non-recurrent

The need for research

London seeks to implement a data-informed policy, but this cannot be accomplished without improved collective action that cuts across institutions, services, and sectors. Greater London (and most of England) lacks consistency in data collection metrics, practices, and management.

The ambition

Within the **Strategic Insights Tool for Rough Sleeping**, personal data on individuals is matched across data from multiple sources, and then aggregated trends and statistics are produced. This is research and statistical work.

The aim is not to change the delivery of support to a specific individual, but service delivery may change to the cohort, or sub-cohorts, of people experiencing rough sleeping.

Aim of this guidance

This guidance is offered to support charities and others service providers working with people experiencing homelessness. It is not written for local authorities. It is designed to help you engage with this project, and to provide you with advice on choosing the lawful basis for processing personal data in delivery of your services and support to clients.

The data to be shared

For the **Strategic Insights Tool for Rough Sleeping**, the data sharing includes personal data like name and DOB, with more sensitive, special category data, like information on health and ethnicity. As you are processing both personal and special category data you need to identify a lawful basis condition from UK GDPR Article 6, as well as a condition from Article 9.

You also need to consider what privacy information you have given, or are giving, to your clients.

Legal basis

We recommend that you review the lawful basis conditions you employ for your support services to clients, not just the lawful basis for sharing data with this project.

Consent

It is not expected that consent (Article 6), or explicit consent (Article 9) would be the lawful basis conditions for your work to support those experiencing homelessness. This is because you have requirements to keep records on the individuals that you work with, and that you wouldn't be able to delete all data you hold about them if they asked. It can also be considered that consent is not the suitable lawful basis because of the imbalance of power between you and your clients, who are vulnerable.

ICO Guide to the General Data Protection Regulation (GDPR)¹

“Consent is one lawful basis for processing, but there are alternatives. Consent is not inherently better or more important than these alternatives...

...If you make consent a precondition of a service, it is unlikely to be the most appropriate lawful basis.

Public authorities, employers and other organisations in a position of power over individuals should avoid relying on consent unless they are confident they can demonstrate it is freely given.”

¹ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/>

Recommended lawful basis conditions

The most likely conditions that apply to your work are:

- Article 6(1) (e) **public task** or Article 6(1) (f) **legitimate interests**
- Article 9(2) (g) **substantial public interest** or Article 9(2) (j) **archiving and research**

Article 6(1) (e) public task

You can consider that providing support to those experiencing homelessness is processing that is necessary for the performance of a task carried out in the public interest. It is in the public interest to:

- work to reduce homelessness
- help individuals improve their wellbeing
- reduce the public health risks of homelessness
- support local authorities to deliver effective services

Article 9(2) (g) substantial public interest

In a similar way to using Article 6(1) (e), you can consider that it is substantially in the public interest to process the special category data of those experiencing homelessness, to deliver services and support to them.

To use this condition, you must also meet a condition in Schedule 1, Part 1 of the Data Protection Act 2018. The relevant condition is '**safeguarding of children and of individuals at risk**' (see **Appendix 1** for details).

Article 6(1) (f) legitimate interests

You can consider that it is within your organisation's legitimate interests, as a provider of support to people experiencing homelessness, to process the personal data of those individuals. Using legitimate interests as a lawful basis means you:

- identify a legitimate interest;
- show that the processing is necessary to achieve it; and
- balance it against the individual's interests, rights and freedoms.

The legitimate interests can be your own interests or the interests of third parties, such as the GLA or a local authority.

Article 9(2) (j) archiving and research

The **Rough Sleeping Integrated Data System** gathers and matches personal data and then anonymises the data for research purposes to help in understanding client journeys and planning services. This area of work lacks reliable research data and the anonymised data outputs will be valuable for reducing homelessness and better planning public services.

To use this condition, you must also meet a condition in Schedule 1, Part 2 of the Data Protection Act 2018. The relevant condition is '**research**' (see **Appendix 1** for details).

What if I use consent as my lawful basis for processing personal data?

Consent is a lawful basis condition in Article 6(1) (a) for personal data, with explicit consent a condition in Article 9(2) (a) for special category data.

However, consent is not usually the appropriate lawful basis condition. Using consent means that you are agreeing to delete all data that you hold about them if they request it, but you will usually need to keep some data for your own legal and record keeping purposes.

Consent vs trust

Organisations sometimes conflate using consent as a lawful basis condition with the desire for trust, choice and transparency with clients.

Trust is very important when dealing with those experiencing homelessness, who may have a distrust of public services or the government. The lawful basis for processing personal data is different to the need and desire to be open and honest with clients, and to help to protect their rights.

Example:

My doctor must have my consent to give me a vaccination.

My doctor does not need my consent to add that vaccination to my medical record, because this record keeping must happen.

Example:

I can choose whether to accept your support with my application for housing, and substance misuse treatment.

I cannot choose whether you keep a record of the offer of support, or the provision of treatment.

We recommend that if you currently use consent as your lawful basis, that you reconsider this and refer to the ICO guidance².

Guidance on the use of consent and how to separate the need for trust and openness is provided in Appendix 2.

² <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/>

Taking part in this project

If your privacy information provided to individuals already mentions activities with personal data, such as:

- research
- data sharing with local authorities
- public interest/public task activities to reduce homelessness

then you are likely to have a lawful basis and justification for sharing client data into the **Strategic Insights Tool for Rough**

Sleeping. This applies to client data already collected, and data you collect after joining this project.

If you did not include these activities, or you used consent as your lawful basis and did not include these activities in that consent, then you must consider whether sharing data for this project is ‘compatible’ with your previously stated activities.

UK GDPR Article 5 covers the Data Protection Principles. The second principle of ‘**purpose limitation**’ states that personal data shall be:

“...collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes...”

This generally means you won’t process the data for a purpose that hasn’t already been described to the individual or isn’t something that they would expect.

Can I share data for this research project?

If you have not previously included research, local authority sharing, or similar activities in your privacy information, whether you used consent or an alternative lawful basis condition, then you would usually either need to seek consent to share (if you used consent), or inform individuals that you are changing your lawful basis (following ICO guidance)³.

ICO Guide to the General Data Protection Regulation (GDPR)

“If there is a genuine change in circumstances or you have a new and unanticipated purpose which means there is a good reason to review your lawful basis and make a change, you need to inform the individual and document the change.”

“If your purposes change over time or you have a new purpose which you did not originally anticipate, you need to comply with the purpose limitation principle. In summary, you can only go ahead if:

- the new purpose is compatible with the original purpose;
- you get the individual’s specific consent for the new purpose; or
- you can point to a clear legal provision requiring or allowing the new processing in the public interest – for example, a new function for a public authority.”

“Where the purpose for your new processing activity is compatible with the original purpose for the processing, you are likely to be able to rely on “legitimate interests” as the lawful basis for the new processing, provided your use of the personal data is necessary for that purpose.”

³ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/#change>

It's relevant for this project that both the UK GDPR and the ICO state that research purposes are already considered 'not incompatible'.

ICO Guide to the General Data Protection Regulation (GDPR)

"If your new processing is for research purposes, you do not need to carry out a compatibility assessment, and in most circumstances you can be confident that your lawful basis is likely to be either public task or legitimate interests."

UK GDPR Article 5

"...further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with [Article 89\(1\)](#), not be considered to be incompatible with the initial purposes ('purpose limitation');"¹

Research into the journey of individuals experiencing homelessness in order to identify trends and deliver more effective services is not incompatible with delivering current services to clients. You therefore can share data into the **Strategic Insights Tool for Rough Sleeping** without seeking specific consent.

However, if you do not already describe research and data sharing with local authorities to your clients, we recommend that you add these into the privacy information you provide to clients.

Privacy Information

A data controller must tell individuals what you are doing with their personal data, unless an exemption applies (eg if it would put others at risk). The privacy notice given to an individual affects what you can do with their personal data because it is part of the duty, under the first Data Protection Principle, to process personal data "...lawfully, fairly and in a transparent manner...".⁴

You could provide specific information about this project, such as,

"We are taking part in a project to better understand the causes for homelessness and rough sleeping, and how local authorities and housing charities can work to reduce homelessness. London borough councils, and housing charities and providers are sharing some client data. This data will be matched to data held by any of the other organisations. Once matched, the data will be anonymised and aggregate to show trends, to identify potential areas for improvement. You will not be identifiable in this aggregate data. Data will shared on a monthly basis so we can look at homelessness journeys."

Or more general information explaining that you will undertake to process and share personal data for research and public interest purposes, with language such as that used by CHAIN,

"Information from CHAIN is also used in statistics and research to help find ways to end homelessness. Names and other information that could identify an individual are never included in research and statistical reports."

⁴ <https://gdpr-info.eu/art-5-gdpr/>

Appendix 1

An individual experiencing homelessness is a vulnerable individual, with heightened safeguarding risks.

Data Protection Act 2018 Schedule 1 Part 1 - condition for use of Article 9(2) (g) substantial public interest.

Safeguarding of children and of individuals at risk

18(1) This condition is met if—

- (a) the processing is necessary for the purposes of—
 - (i) protecting an individual from neglect or physical, mental or emotional harm, or
 - (ii) protecting the physical, mental or emotional well-being of an individual,
- (b) the individual is—
 - (i) aged under 18, or
 - (ii) aged 18 or over and at risk,
- (c) the processing is carried out without the consent of the data subject for one of the reasons listed in sub-paragraph (2), and
- (d) the processing is necessary for reasons of substantial public interest.

(2) The reasons mentioned in sub-paragraph (1)(c) are—

- (a) in the circumstances, consent to the processing cannot be given by the data subject;
- (b) in the circumstances, the controller cannot reasonably be expected to obtain the consent of the data subject to the processing;
- (c) the processing must be carried out without the consent of the data subject because obtaining the consent of the data subject would prejudice the provision of the protection mentioned in sub-paragraph (1)(a).

(3) For the purposes of this paragraph, an individual aged 18 or over is “at risk” if the controller has reasonable cause to suspect that the individual—

- (a) has needs for care and support,
- (b) is experiencing, or at risk of, neglect or physical, mental or emotional harm, and
- (c) as a result of those needs is unable to protect himself or herself against the neglect or harm or the risk of it.

(4) In sub-paragraph (1)(a), the reference to the protection of an individual or of the well-being of an individual includes both protection relating to a particular individual and protection relating to a type of individual.

Data Protection Act 2018 Schedule 1 Part 2 - condition for use of Article 9(2) (j) archiving and research.

Research etc

4 This condition is met if the processing—

- (a) is necessary for archiving purposes, scientific or historical research purposes or statistical purposes,
- (b) is carried out in accordance with Article 89(1) of the GDPR (as supplemented by section 19), and
- (c) is in the public interest.

Appendix 2

Consent

When we process personal data about individuals they are known as data subjects, and they have rights under data protection legislation in relation to their data.

What do we mean when we say consent?

To collect and use (process) personal data, you must have a **lawful basis**. This means meeting a condition for processing from within the data protection legislation. These conditions are listed within Article 6 (for personal data) and Article 9 (for more sensitive, special category data like health, ethnicity and religion) of the UK General Data Protection Regulation (UK GDPR).

Consent is one of the available conditions in both Articles, but there are others that apply to your work. For data protection purposes, consent has a specific meaning as one of the conditions for the lawful processing of personal data. This is a meaning different than when we talk about consent/implied consent in other areas, for medical treatment for example.

We want an open relationship with our clients and we want them to agree to working with us.

That's great. The services you provide work best when clients are actively engaging in the process. You shouldn't hide what you're doing with their data, and you should make it clear why you are carrying out your tasks. You must use privacy notices to tell people what data you hold about them, what you are doing with it, and who you share it with.

You need to be careful with the language you use so as not to confuse individuals or unnecessarily limit what you can do with their data.

Avoid consent statements such as "I agree", "I consent", or "I give permission". If you feel it appropriate to gain an individual's confirmation of understanding, use "I understand", or "I acknowledge". Remember though, this is still not consent.

We can describe our work in positive ways, such as:

"We are required to provide XYZ service. it's the highest priority to us that we work proactively with you to get the best outcomes for everyone. We want to make sure that our clients are fully engaged with our service and understand what we offer and how we can best help."

Or

"We will assess your situation and make referrals to the A, B or C teams. We want to make sure that you understand your options."

Our clients have a choice whether to work with us, surely we need their consent?

In most cases, an individual has a choice about whether they engage with your services. For example, they can choose to accept support with housing applications. However, the processing of their data is different to delivering the service they can choose to take part in. You don't need their consent to keep a record on them and offer that support, but they still have a choice of whether to accept that support.

Your clients are considered vulnerable because of their homelessness and other conditions that may have caused or been aggravated by homelessness, such as substance misuse. As an organisation providing life changing services, you are in a position of power over your clients. It can be difficult to justify using consent as the lawful basis where there is an imbalance of power.

But how do I tell people what we're doing with their personal data?

It is important to recognise that communicating clearly and being open and honest with your clients is a fundamental process of being fair. You must be transparent in your use of personal data and individuals must always be informed of what you plan to do with their data, even if they don't need to consent. There are exceptions to this requirement to inform people, for example when dealing with alleged perpetrators or where there is a serious risk to the clients or others.

In most cases you must use a privacy notice⁵ to tell people:

- what data you collect about them
- what you do with it
- why you do that
- who you share the data with.

There must as a minimum be a short privacy notice on forms when you are collecting personal data, which links to a full privacy notice, often published to your website.

In some of your work, such as when there are fraud or safeguarding concerns, you won't always tell people that you are processing their data specifically, but you should still inform people on a general basis that safeguarding referrals to the police or local authority take place.

⁵ <https://ico.org.uk/for-organisations/sme-web-hub/make-your-own-privacy-notice/>

What if I have to use the word consent?

Consent has a particular meaning as a condition for processing under data protection legislation, but in normal daily use it means different things. Sometimes individuals will expect to see the word consent. This may be where a medical professional insists on a patient's consent to disclose information. In these cases you need to look more carefully at the language you use.

You should be clear on why you are processing the data and separate that aspect from the part of the work where people expect to see the word 'consent'. Remember, gaining confirmation of understanding is not consent.

You won't ask for consent but will instead use language like "*I understand that I cannot be referred for substance misuse treatment without [organisation name] receiving health information from my GP. I consent to my doctor releasing information to [organisation name]*". This statement is the type of information that is required to be covered in a privacy notice, as you're telling people why you are collecting their personal data and what you are doing with it.

Do I need consent to talk to next of kin?

There are a few ways that information on an individual can be requested by someone, including regular information sharing, a Subject Access Request or similar.

We often talk about 'sharing' personal data. However, some of these situations are more properly called disclosures. Being asked to provide information on an individual to family members is one of those circumstances. In most cases you would need an individual's consent to disclose information to a third party, such as next of kin. But this type of decision is usually specific to a case.

Whilst data protection legislation does not cover deceased individuals, there are still confidentiality requirements that apply, so seek advice from your data protection or legal teams if this is something that you are dealing with.

I'm going to ask for consent anyway, it can't hurt

No, don't do that. Seeking consent where it is not appropriate causes confusion and could have a negative impact on your work and on individuals. If you ask for consent where it is not needed, you are giving your client a false sense of the control. Consent must be freely given and it must be possible for consent to be withdrawn and for the processing to stop. If you are required to keep processing their data regardless of their wishes, then you should not be seeking consent from them in the first place. Individuals must have true choice and control.

Incorrectly asking for consent can delay your work, confuse and upset your clients and impact your ability to deliver services.