

Equality Review Template

The review process uses similar methodology to the Equality Impact Assessment Process. Unless you have a detailed knowledge of the equality duties, equality legislation and the EIA process, it is strongly recommended that attend an EIA training course before you attempt to complete the review.

This template should be used to assess the impacts on:

- disability
- race
- sex
- gender reassignment
- age
- religion and belief
- sexual orientation
- pregnancy and maternity
- caring responsibilities (usually only for HR policies and change management processes such as back offices)

1. Name of the legislation, policy, strategy, project or service being reviewed.

Data Protection Act 1998 (DPA).

2. Individual Officer(s) & unit responsible for completing the Review.

Ollie Simpson, Domestic Data Protection Team, Information Directorate.

3. What sources of information have you gathered since the proposals were implemented that will help you to assess the actual equality impacts of this particular piece of work on different groups of people (such as statistics, survey results, complaints analysis, customer feedback).

The UK launched a 12 week Call for Evidence on the data protection legislative framework in July 2010. The Call for Evidence invited individuals and those representing specific groups within society to outline their views on the current law on data protection, and in particular, how well they consider the DPA to address certain specific or technical matters.

Over 160 written responses were received, including from the Information Commissioner's Office (ICO), Citizens Advice, the General Medical Council, the General Social Care Council, a variety of legal firms and members of the public.

As well as the publication of the evidence paper, the Call for Evidence included workshops and meetings with key interested parties which took place between August and October 2010. MoJ officials have also carried out desk research on specific aspects of the DPA and the Directive. As part of the Post Implementation Review of the DPA, the views of data subjects were extracted from a sample of correspondence received by the Ministry of Justice (and its predecessor, the Department for Constitutional Affairs) between January 2007 and April 2010. This sample consisted of 34 letters from MPs and 37 received directly from members of the public. It is not intended to be a scientific sample of the experiences of all UK citizens, but provides anecdotal evidence of issues and difficulties encountered in respect of the DPA.

Several other sources were also taken into consideration, including:

- Information Rights Tracker Survey conducted by the British Market Research Bureau (BMRB), commissioned by the Ministry of Justice (January 2010);
- ICO Customer Satisfaction Survey (July 2009);
- The Flash Barometer 226 "Data Protection perceptions among data controllers among enterprises in the Member States" telephone survey conducted on behalf of the European Commission (2008); and
- ICO Personal Information Survey conducted by ICM Research (February 2008).

4. Are there any gaps in the information that make it difficult or impossible to form an opinion on how this particular piece of work has affected different groups of people? If so, what are the gaps and how do you plan to collect the missing information. Please provide details and go to question 10.

There are no centrally collated statistics about how the DPA affects people along lines of disability, race, gender and gender identity, pregnancy and maternity and caring responsibilities, which means that we do not know for certain whether or how the DPA has affected these groups in different ways. However, we have analysed the BMRB 2010 Tracker Survey, which does contain information about individuals' awareness of the DPA and information rights and their attitude to disclosing personal data about themselves, broken down by gender, age and ethnic origin ("white" and "non-white"). We have also considered the ICO's Personal Information Survey, which breaks down respondents along lines of age and gender.

According to the Information Commissioner's Personal Information Survey, prepared by ICM Research in 2008, there was little difference between the sexes in terms of their level of confidence in the way organisations look after their personal details. According to the survey 45% of males and 47% of females had confidence that organisations would look after their personal details. Confidence was highest amongst 18-24 year olds (64%) and 25-34 year olds (51%) and lowest amongst 35-44 year olds (37%). The level of confidence amongst those aged 65 and above was 46%.

The BMRB Information Rights Tracker Survey responses have consistently indicated a higher level of trust in the handling of personal information by public authorities than by businesses. The conclusions drawn from the Information Rights Tracker Survey support the findings of the Personal Information Survey. Levels of trust are broadly similar between men and women (56% of men and 54% of women were comfortable giving businesses their data, whilst 67% of men and 72% of women were comfortable doing the same to public authorities). Similarly, the level of trust in the handling of personal data, by both businesses and public authorities, seems to be highest among younger adults and generally

decreases with age. Non-White respondents were more likely to be comfortable giving their personal data to businesses (63%) compared to White respondents (54%), although the trust levels were roughly equal when it came to giving data to local authorities (72% for non-White respondents, compared to 69% of White respondents). This could indicate that non-white people have benefitted at least as much as white people from the protections of the DPA, if a level of confidence in organisations' handling of personal data indicated a positive experience in this area.

The Information Rights Tracker Survey also showed that the vast majority of respondents are aware of their rights to obtain personal information from public authorities and businesses. This was equally true of men and women who responded (85% and 86%, respectively). The age range 65 and above was least likely to be aware of their rights in this regard (81%), with those in the age range 35-44 most likely to be aware (88%). White respondents were slightly more aware of their rights (86%) as opposed to non-White respondents (82%), but these awareness levels are still relatively high. Knowledge of the DPA itself as a means to obtain information from public authorities was almost equal between the sexes (29% for men and 30% for women) and between White respondents and non-White respondents (29% and 30% respectively). However, awareness of the DPA was lower for those aged 65 and above (14%) and highest for those aged between 25 and 34 (39%). This difference may be explained by the withdrawal from work life and the fact that this age group grew up at a time when the use of computers and technology holding personal data was not as widespread, and there was no specific data protection legislation in the UK.

A similar conclusion can be drawn from the ICO's 2008 Personal Information Survey where, in response to a series of questions, the vast majority of respondents (average range 88% to 93%) thought that organisations are legally obliged to take certain steps when handling personal information. There was little difference (mostly 1% or 2%) between the sexes in terms of their responses. However, only 83% of those aged 65 and above thought that organisations are legally obliged to "provide you with details on how they use your personal information" as compared with 94% of 35 to 44 year olds and 93% of 18 to 24 year olds. Similarly, only 59% of those aged 65 and above were aware that "it is the DPA that sets out how companies and government departments manage your personal information", whereas the level of awareness for all other age groups was between 73% and 78%.

The ICO's customer satisfaction survey from July 2009 involved a sample of 263 people who had made complaints or enquiries to the ICO which had been completed or closed in the three months up to April 2009. Of these 68% were men and 60% were under 50. The proportion of the sample who were from ethnic minorities (8%) or registered disabled (8%) broadly reflects the population as a whole. This could demonstrate (albeit with a limited sample) that the Act, and non-compliance with it, is not affecting these groups adversely, and that, when problems occur, they are aware of how to seek redress.

In light of responses to the Call for Evidence, workshops held with stakeholders, desk research and the findings of surveys on rights awareness conducted by the Information Commissioner and the Government, we have not been presented with evidence to conclude that the DPA has had an adverse impact on the groups of people listed above.

5. Does the information indicate that there are unexpected adverse equality impacts? Please provide details of what the impacts are and whom they affect.

In broad terms, the DPA is working as intended, with most challenges only arising in more limited or technical areas. However, it is apparent there are still occasions where the DPA is not understood or applied correctly by organisations and individuals. This means that, in certain areas, the processing of personal data may still be open to abuse or misuse. There have also been examples of organisations citing the DPA incorrectly when deciding not to release information. This has led to the creation of unnecessary barriers to the processing of personal data (for example, in the field of health and social care) which were not intended by the legislation. From time to time the Information Commissioner receives complaints about a gas or electricity company that will not disclose whether an elderly relative or neighbour is in arrears and in danger of being cut off. In response to these concerns the Information Commissioner's Office published guidance "Data Protection myths and realities" to reduce the risk of organisations citing the DPA incorrectly.

One of the conditions for the processing of personal data and sensitive personal data is consent. This issue is relevant to both disability and age. Where the data controller seeks to process personal data fairly and lawfully by relying on consent there is the potential for an adverse impact on those who are incapable of giving free, informed and explicit consent, such as those who are mentally impaired or young children. In order to reduce the risk of an adverse impact the DPA imposes a duty on the Information Commissioner to publish codes of practice and guidance. The Information Commissioner has recognised the difficulties involved for data controllers in judging whether a mentally impaired person or a child is capable of giving fully informed consent. The Information Commissioner has published several technical notes in the area of education and health which deal with the issue of consent and set out best practice to be followed by data controllers.

There is a lack of statistical data in the surveys mentioned in respect of disability, pregnancy and maternity, caring responsibilities, religion, belief, sexual orientation and gender identity. However, the ICO has published an Employment Practices Data Protection Code which, if complied with, reduces the risk of potential adverse equality impacts arising in these areas. The Code is intended to help employers comply with the DPA and to encourage them to adopt good practice. The Code aims to strike a balance between the legitimate expectations of workers that personal information about them will be handled properly and the legitimate interests of employers in deciding how best, within the law, to run their own businesses. The Code provides advice on the processing of personal information in the context of recruitment and employee records related to disabilities and race and equality monitoring. Independently, a number of organisations, such as Local Authorities, Police Forces and Colleges, have published equality impact assessments on their data protection practices and procedures and from desk research carried out none of them have identified any potential adverse equality impacts.

6. Can the adverse impacts be justified without taking steps to mitigate or remove the impacts? Please provide details of why you plan to take no further action.

There is no evidence, based on statistical studies, desk research, stakeholder workshops and responses to the recent Call for Evidence to suggest that the DPA has in practice had an adverse impact on equality which would warrant further action. However, see the answer to question 10.

7. If you cannot justify the adverse impacts, what further action do you plan to take to minimise or remove the impacts? Please provide details including who will complete the work and when.

Note – if further work is required, another review date will need to be fixed – see question 10.

We do not intend to carry out further action, as we have no evidence that the DPA has had an adverse impact on equality in practice.

However, the independent regulator of the DPA, the ICO, has published a Single Equality Scheme, which highlights the equality and diversity work the ICO has undertaken, including a Disability Equality Scheme and diversity training for staff. It also sets out in an Action Plan what the ICO intends to do with regard to equality, including a plan for capturing information about its users which could identify any groups not using its services (for example, pursuing a complaint against a data controller) and analysing the data to identify any adverse impact of its policies and practices. The Scheme also commits the ICO to reviewing the accessibility of the advice it offers; currently, the ICO's website conforms to the accessibility guidelines for UK Government websites, allows users to change the size of the text with their browser settings and supports 'Browsealoud', which reads webpages aloud for the blind, partially-sighted and those that have difficulty reading text onscreen. The Single Equality Scheme was subject to a formal consultation between June and September 2010, and a final version is due for publication by the ICO in March 2011.

In addition, the Equality and Human Rights Commission is carrying out a research project to explore the issues surrounding information privacy and human rights. The report has not yet been published.

8. Is there any evidence that this particular piece of work has delivered positive equality impacts for different groups of people and/or improved equality of opportunity? Please provide details of the impacts and the evidence used to identify them.

The DPA acknowledges that certain types of personal data need to be treated with additional care, and provides a separate category of "sensitive personal data" to reflect this. This category includes:

- the racial or ethnic origin of the data subject;
- his or her religious beliefs or other beliefs of a similar nature;
- his or her physical or mental health or condition;
- membership of a trade union;
- his or her sexual life.

Generally, the DPA requires that anyone wishing to process such information must satisfy extra conditions to ensure it is processed lawfully. Moreover, the third data protection principle (applicable to both personal data and sensitive personal data), requiring anyone processing personal data to ensure that the data processed is "adequate, relevant and not excessive", should offer a general protection against the collection of unnecessary information on race, disability, religion, gender and sexual orientation, which could result in discriminatory decisions based on such information. However, one response to the Call for Evidence did point out that the above list of sensitive personal data does not include (among other things) sex, colour and nationality and, as such, these would simply be afforded the protection offered to non-sensitive personal data (including the third data protection principle's prohibition on excessive processing).

At the same time, Schedule 3 to the DPA allows organisations to process sensitive personal data about a person's race for the purposes of promoting diversity amongst its workforce. This was further extended by Statutory Instrument (The Data Protection (Processing of Sensitive Personal Data) Order 2000) to allow organisations to retain personal data about religion and health (including disability). This means that sensitive personal data can be processed "for the purpose of identifying or keeping under review the existence or absence of equality of opportunity". This would appear to be a useful provision in promoting equality in a variety of areas, and the Call for Evidence sought views on whether additional categories of data should be categorised as sensitive. Responses to that question did not consider extending the definition of sensitive personal data to gender, gender identity, age and caring responsibilities, but either tended to focus on financial information or expressed the view that the current definition was adequate. However, one respondent pointed out that aggregated non-sensitive personal data (for example a name and a photograph) could reveal information about gender reassignment.

The DPA provides individuals with a right of access to information about themselves. There is some anecdotal evidence to suggest that the right has had a positive impact on individuals who believe they may have been discriminated against because it enables them to access information for use in employment discrimination cases.

9. If this particular piece of work was expected to deliver positive equality impacts and outcomes and the evidence suggests that this has not happened, please say whether you intend to take further action to remedy this and if not, provide your reasons for taking no further action.

The DPA was intended to help ensure a minimum standard of data protection legislation throughout the EU, protect individuals' rights and freedoms, in particular their right to data protection safeguards, and to facilitate the free flow of personal data within the EU in the interests of improving the operation of the single market. Beyond this, it was not expected to deliver positive equality impacts.

10. If you are unable to assess the actual equality impacts or further work is required to minimise or remove unexpected impacts, you will need to set another date for review. Please provide the next review date and details of who is going to complete it.

A legislative proposal for a new data protection instrument is expected from the European Commission in mid-2011. This will then be subject to negotiation amongst EU Member States. Any new legislative changes will require a full impact assessment, which will include an assessment of the potential impact on equalities. We will work with the relevant bodies wherever it appears that there may be an impact on equality.

As set out above, the ICO will also monitor the use of its services by different groups as part of its Single Equality Scheme.

11. Summary details, sign off by Senior Manager and date approved.

You should now complete a brief summary (if possible, in less than 50 words) **setting out which policy, legislation or service the EIA Review relates to, how you assessed it, a summary of the results of consultation, a summary of the impacts (positive and negative) and, any decisions made, actions taken or improvements implemented as a result of the Review.** The summary will be published on the external MoJ website.

This Equality Impact Assessment Review relates to the Data Protection Act 1998, which transposes EU Directive 95/46/EC and provides a framework for the secure and lawful handling of personal data. Based on information received from responses to a Call for Evidence held between July and October 2010, desk research carried out by officials, workshops to assess different aspects of the legislative framework, and correspondence received by the Department, we have concluded that the legislation holds no adverse impacts for equality.

Name (must be grade 5 or above): Belinda Lewis

Department: Ministry of Justice

Date: 21 January 2011

Note: The EIA Review should be sent **by email to anthony.shepherd@justice.gsi.gov.uk of the Corporate Equality Division (CED), for publication.**