



LMA GUIDANCE:

GDPR CORE USES INFORMATION NOTICE

FEBRUARY 2018



INSIGHT CONSENSUS INFLUENCE

NOTE: This guidance and the London Market Core Uses Information Notice will be updated when the UK Data Protection Bill is enacted - the Bill currently contains a new processing ground for special category personal data - see [LMA bulletin dated 22 January 2018](#) for details.

INTRODUCTION

The EU General Data Protection Regulation ("GDPR") will replace the UK Data Protection Act 1998 and brings with it new requirements. All data controllers (see data controller and data processors section below) are required to explain to consumers in an information notice what personal data they collect, what it is used for, and the legal grounds for "processing" such data, which in some circumstances may be the ground of "explicit consent" of the consumer or other data subject. This creates specific problems for the insurance industry and, in particular, the Lloyd's and London Market ("the Market"), where there can be often multiple data controllers who pass personal data between each other. The full list of requirements for an information notice can be found at <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-be-informed>.

The Core Uses Information Notice is designed to explain to consumers the complexities of the Market and how personal data may be processed by the various data controllers.

For the purposes of the GDPR, consumers are referred to as data subjects, and include policyholders, beneficiaries, claimants or witnesses. Processing includes the gathering, recording, storing, use and erasure of personal data.

This guidance sets out the background to the Core Uses Information Notice and how it should be used by insurance market participants.

The Core Uses Information Notice has been developed by the cross-market GDPR Focus Group led by the Lloyd's Market Association ("LMA"), and will be reviewed quarterly. This guidance has been developed by the LMA and Norton Rose Fulbright.

DATA CONTROLLERS AND DATA PROCESSORS

The legal requirement to give an information notice/obtain consent under the GDPR applies to data controllers. Where an insurance market participant is acting as a data processor of a data controller, no such requirement applies, although the data controller can agree with the data processor that the data processor will give notice/obtain consent on its behalf (particularly if the data processor has an interface with the data subject and the data controller does not).

The Information Commissioner's Office ("ICO") current guidance on whether an organisation is acting as a data controller or data processor in a particular context can be found at <https://ico.org.uk/media/for-organisations/documents/1546/data-controllers-and-data-processors-dp-guidance.pdf>.

The table below sets out a summary of the key factors relevant to the classification and some examples of the likely characterisation of insurance market participants in different contexts. Please note that the determination is always a question of fact and the examples cited below may differ depending on context.

<i>Classification / GDPR Definition</i>	<i>Factors Relevant to Classification</i>	<i>Insurance Market Participant Examples</i>
Data Controller <i>determines the purposes and means of the processing of personal data</i>	<ul style="list-style-type: none"> • Determines the purposes for which and the manner in which personal data is processed • Exercises overall control over the “why” and the “how” of personal data processing activity • Is the party that decides: <ul style="list-style-type: none"> ○ to collect the personal data in the first place ○ which individuals’ personal data to collect ○ the categories of personal data to collect ○ the purpose for which the data is used ○ whether and to whom to disclose the data ○ how long to retain the data or whether to make non-routine amendments to the data • Where legal obligations, regulations or market practices require a party to make the above determinations this may tip the balance towards them being considered to be a data controller (e.g. if an insurance market participant is expected to retain data and provide it if there is a dispute between parties) 	<p>An insurer under an Insurance Agreement</p> <p>Both insurer and insurance broker under a Terms of Business Agreement (TOBA)</p> <p>Both insurer and coverholder under a Binding Authority Agreement</p> <p>Both reinsurer and reinsurance broker under a Reinsurance Agreement</p>
Joint-Controller <i>two or more data controllers that jointly determine the purposes and means of the processing of personal data</i>	<ul style="list-style-type: none"> • Works with another joint-controller toward an overarching unified purpose (even if each joint-controller has different discrete data processing tasks) • Jointly determines with another data controller, the purposes for which, and the manner in which, personal data is processed (i.e. makes the same data controller decisions listed above, but jointly with another data controller) 	
Data Processor <i>processes personal data on behalf of the data controller</i>	<ul style="list-style-type: none"> • Processes personal data on behalf of, and as directed by, another organisation for purposes determined by that other organisation May retain some discretion as to the performance of its tasks, subject to the terms of its contract with the data controller (e.g. choosing I.T systems used for processing data, how to store data, which analytical methods to use, what information security controls to apply), without exercising overall control of the personal data or the purposes for which it is processed 	Third Party Administrator (processor) on behalf of an insurer (controller) under a Third Party Administrator Agreement (TPA)

THE CORE USES INFORMATION NOTICE AS PART OF A LAYERED APPROACH

The Core Uses Information Notice covers the core uses of personal data required to allow the insurance market to operate efficiently. These core uses are uses and disclosures that, without which, risks could not be underwritten, checked for fraud or paid out on.

However, the Core Uses Information Notice does not provide a complete solution because:

- a) the core uses **do not** include less fundamental uses such as marketing; and
- b) the Core Uses Information Notice itself does not contain details of the individual insurance market participant's data protection contact (see link to ICO website in the introduction section for details of this requirement).

Therefore, the Core Uses Information Notice can be thought of as the third layer in a three layer approach to information notices.

Layered approach

Layer	Notice type	Links
Layer 1	Short Form Notice	links to Layer 2 and potentially Layer 3
Layer 2	Insurance Market Participant's own Long Form Information Notice/ Privacy Policy (which would normally reside on their website)	links to Layer 3
Layer 3	Core Uses Information Notice	

Layer 1

The first layer is a "Short Form Notice" which would typically be provided in proposal forms, policy wordings and agreements with consumers or clients. The Short Form Notice should also allow insurance market participants to obtain consent where necessary (see Meeting GDPR Information Notice and Consent Requirements below). The Short Form Notice would provide key basic data protection information and direct consumers to other sources for further information. One such source will be the Core Uses Information Notice.

The LMA will be publishing model wordings relevant to Layer 1 during March.

Layer 2

The Core Uses Information Notice does not contain details of the insurance market participant's data protection contact or any non-core uses of personal data, so the insurance market participant will need to provide a second layer by giving its own specific information notice/privacy policy providing those contact details and explaining those uses. That second layer may repeat sections of the Core Uses Information Notice and should clearly signpost the Core Uses Information Notice using wording such as

the following:

“Insurance involves the use and disclosure of your personal data by various insurance market participants such as intermediaries, insurers and reinsurers. The London Insurance Market Core Uses Information Notice [insert link to the Core Uses Information Notice] sets out those core necessary personal data uses and disclosures. Our core uses and disclosures are consistent with the London Market Core Uses Information Notice. We recommend you review this notice.”

This means the Core Uses Information Notice will generally be linked from the insurance market participant’s own information notice or privacy policy.

Layer 3

This is the Core Uses Information Notice which is currently published on the [LMA’s GDPR webpage](#). It is a working draft and will be updated quarterly as final rules and guidance become clear. Later in 2018, the Core Uses Information Notice will be hosted on the London Market Group’s website as a dynamic and interactive GDPR webpage.

MEETING GDPR INFORMATION NOTICE AND CONSENT REQUIREMENTS

The GDPR requires data controllers to provide detailed information notices which describe the uses and grounds relied on for processing personal data.

Some of the personal data processed for the core purposes could be special category personal data, such as health information or information relating to criminal convictions, and for some purposes, that special category personal data can only be processed with the explicit consent of the related data subject, because there is no other appropriate legal ground to rely on. Data subjects may withdraw their consent and the insurance contract or insurance related services may have to cease if they do so¹.

Given the way the insurance market works, with reinsurance often taking place after the initial policy has been underwritten, and the possibility of claims payments, it is not possible to identify which insurance market participant will receive the data when the data is initially collected or who will be involved at claims stages. Therefore a cascade-type mechanism is used whereby the insurance market participant that initially collects the data subject’s personal data must tell him/her which other controllers it has disclosed any of that personal data to; and if that disclosee has further disclosed it, the disclosee must tell the data subject on request who it has disclosed it to.

The Core Uses Information Notice therefore works on the basis that data subjects will be able to identify data controllers at appropriate times by making enquiries through Layer 1 and/or 2, even where all relevant controllers could not be named at the outset. To make the system work, all insurance market participants using the Core Uses Information Notice must comply with this mechanism (section 4 of the notice).

The consent wording in the Core Uses Information Notice (section 6 of the Notice) covers not just the insurance market participant with the interface with the data subject but the processing of other insurance market participants down the chain on an unnamed basis, until the data subject requests the identity of the other data controllers.

¹ See [LMA bulletin of 22 January 2018](#) relating to the proposed UK Data Protection Bill insurance processing ground - this guidance will be updated when the Bill is enacted.

The Core Uses Information Notice on its own, or a link to the Core Uses Information Notice in a document, does not obtain GDPR consent. Where consent is required, prominent and compact consent wording needs to be built into documentation provided to the data subject so that there is no doubt he/she has seen it and consented to it to meet the GDPR consent standard. This will be facilitated by appropriate use of the first layer described above, ensuring the first layer notice refers not just to the specific insurance market participant with the interface but also other insurance market participants' core uses in general terms.

OTHER CONSIDERATIONS

- Given that insurance market participants may not have had an interface with claimants, witnesses, or other third party data subjects until a claim occurs, and that, in some cases, group policyholders may have neglected to meet the correct notice and consent requirements in respect of those data subjects, all insurance market participants should include the short form wording in all claims forms as well as proposal forms or other forms through which personal data is collected.
- Insurance market participants should consider including links to their own privacy notices in email footers.
- In order to reduce both the regulatory burden and the severity of any data loss, all insurance market participants should limit the amount of personal data they disclose to other market participants to the minimum necessary to achieve the stated purpose in the Core Uses Information Notice.
- The Core Uses Information Notice contains a general description of profiling and automated decision making (section 7), retention periods (section 8) and international transfers (section 9) that might be undertaken by insurance market participants. Insurance market participants may include more specific details on these topics in their own notice.

CONTACT US



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