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D3 Protection of personal information

About this chapter

- 3.00 This chapter gives guidance on the protection of personal information, and is in line with the procedures followed by the Department for Work and Pensions (DWP). It includes guidance on
- The Data Protection Act 1998 which gives claimants access to data held electronically and clerically, see *Data Protection Act 1998* later in this chapter
 - the general principles of confidentiality and the exceptional circumstances when you may give out confidential information without the individual's agreement, see *General principles of confidentiality* later in this chapter
 - access to information within Local Authorities (LAs), see *Access to information within LAs* later in this chapter
 - information that must be given to a claimant, see *Information which must be given to a claimant* later in this chapter
 - how to establish the identity of the person asking for the information before you can decide if giving information is appropriate, see *Establishing the identity of the person asking for information* later in this chapter
 - giving information to someone acting on the claimant's behalf, including members of the family, see *Giving information to someone acting on the claimant's behalf* later in this chapter
 - information from and asked for by third party contact, including landlords, see *Third parties* later in this chapter

3.01-3.49

3.50-3.99

Data Protection Act 1998

3.50 The Data Protection Act (DPA) 1998 came into force in March 2000, and replaced the DPA 1984 which gave claimants access to data held electronically. The DPA 1998 extends this to cover access to all **clerical** records, and also states that all data recorded must be

- adequate, relevant and not excessive
- accurate and up to date
- retained for no longer than is necessary
- obtained fairly and used for specified lawful purposes

3.51 The DPA 1998 is based on eight principles which regulate data processing relating to individuals. It also

- sets out safeguards for processing personal data. These safeguards relate to
 - how data is collected
 - what it can be used for
 - who it can be given to, and
 - the access rights of individuals to any data held
- contains new elements, including
 - greater care over sensitive data, such as racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and details about health or sex life, criminal offences or convictions
 - a requirement to give individuals, at the time information is collected, more details regarding how that information about them will be used
 - provisions to ensure that personal data transferred outside the European Economic Area is adequately protected

3.52 Authorities must ensure that their arrangements comply with the statutory requirements.

3.53 Further information can be obtained from
Local Government Policy Section
The Office of the Data Protection Registrar
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Phone: 01625 535777

3.54-3.99

General principles of confidentiality

- 3.100 Confidentiality is essentially a matter for each LA. The aim is to protect the privacy of the individual while safeguarding public funds.
- 3.101 As recipients of personal information provided in respect of claims, all LAs must comply with the general common law on confidentiality and with the Data Protection Act. Broadly speaking, the public give personal information in the knowledge and understanding that, with few certain exceptions, their privacy is assured. Usually information is only disclosed without consent
- when disclosure is in the public interest, or
 - to meet statutory or welfare requirements

3.102-3.129

Exceptional circumstances

Disclosure of personal information without the consent of the individual

- 3.130 In certain exceptional circumstances, it may be appropriate to give out confidential information without the individual's agreement. These are most likely to be to
- DWP offices. Information which can be exchanged without a person's agreement is set out in law, see *D1 Liaison with local DWP offices* earlier in this part
 - the Child Support Agency (CSA). In connection with a claim from the non resident parent (NRP) or parent/person with care (PaWC/PeWC), the law requires an LA to tell the CSA the
 - amount of housing costs eligible for Housing Benefit (HB)
 - amount of HB payable/paid
 - council tax liability
 - amount of Council Tax Benefit (CTB) payable/paid

See *Regulation 4 of the Child Support (Information, Evidence and Disclosure) Regulations 1992*

continued

(3.130)-3.211

- (3.130) • Her Majesty's Revenue and Customs (HMRC). The law allows an inspector to ask an LA for information which may be relevant to the tax liability of any person. An LA must tell the inspector the
- name and address of people to whom HB/CTB has been paid. This includes HB paid direct to a landlord
 - amount of HB/CTB paid

The IR have asked their staff to consider the LAs' costs in providing this information. If you consider that a request is unreasonable or expensive to meet, discuss with the inspector whether alternative arrangements for providing the information can be made. See *Section 18A, Taxes Management Act 1970*

- a government department to safeguard public funds
- the police for the prevention or detection of crime and the apprehension or prosecution of criminal offenders
- a Social Services Department, or Social Work Department in Scotland, or other welfare body because someone in the family is at risk
- another LA. Prescribed information can be given when extended payments have been claimed, see *C5 Exchanging information between authorities* earlier in this manual

3.131-3.189

Access to information within LAs

- 3.190 Information given by, or held about, a member of the public should be used only for the purpose for which it was obtained or given. LAs are expected to make information given to them for HB or CTB purposes available to those officers within the LA who need it to administer or audit claims for benefit. LAs may use HB or CTB information for other purposes, eg to assess entitlement to free school meals, but only if the claimant consents. This is specified on the claim form.

3.191-3.209

Councillors

- 3.210 Councillors are entitled to have access to all documents in the possession of the LA of which they are a member, **provided** they have good reason for such access, for example because they are
- directly involved in the LA's administration of HB or CTB, or
 - acting on behalf of a claimant
- 3.211 LAs are expected to take suitable steps to regulate the access of councillors to confidential information about individuals.

3.212 If a councillor is acting on behalf of a third party, such as a landlord, they should not be given any more information than would be given to the third party, see *Landlords* later in this chapter.

3.213-3.249

Information which must be given to a claimant

3.250 Claimants are entitled to certain information in connection with their claim for HB or CTB, see *A6 What a decision notice must include*.

3.251 LAs must, on request, provide the claimant or their representative

- general factual information about a claim
- details of benefit payment, and the period for which it was paid
- copies of statements the claimant has made or forms they have filled in
- copies of letters or forms the claimant has sent to the LA

3.252-3.299

Establishing the identity of the person asking for information

3.300 Before giving information to anyone, you must be satisfied that the person is who they claim to be. If the claimant's written authority for disclosure of information is provided, compare the signature with other signatures held by the LA, for example on the claim form.

3.301 Particular care should be taken to ensure that telephone requests are genuine. If a caller's identity is in doubt, confirm it by

- asking for the telephone number, extension and the reason why the information is needed. If possible, check the number given before ringing back
- asking for details which can be checked against information which is already held

3.302 While you are establishing the person's identity, take care not to give any information away, either directly or indirectly.

3.303-3.349

3.350-3.429

Giving information to someone acting on the claimant's behalf

3.350 Information which can be given to a claimant can also be given to someone acting on their behalf, if the claimant agrees. Sometimes the claimant's agreement can be assumed, for example if it is the claimant's solicitor, accountant, MP, social worker or a welfare rights worker and it is clear they are acting on the claimant's behalf.

3.351-3.379

Members of the family

3.380 Information can be given to a close member of a claimant's family if they are clearly acting on the claimant's behalf and with their agreement. If there is any doubt as to whether the claimant agrees, LAs should insist on seeing a written agreement.

3.381-8.399

Third parties

3.400 Dealing with a claim for HB or CTB may involve checking certain facts with a third party, for example an employer or landlord. It will probably be obvious to the third party that a claim for benefit has been made. Therefore such enquiries should be made with the claimant's written agreement. A third party may, on occasions, volunteer information about a claimant which may lead an authority to

- revise or supersede benefit entitlement, or
- implement direct payments of benefit

3.401 As a general principle, any information used to decide a claim has to be open to the claimant. LAs need to consider whether the claimant should be approached to comment on the information before any action is taken on the benefit claim.

3.402 In exceptional cases, if a third party makes it clear that they will not allow disclosure in **any** circumstances, you cannot use that information to decide a benefit claim. Such information might include something which, if disclosed, could prove harmful to the claimant's health.

3.403-3.429

Landlords

- 3.430 Do not give information to the claimant's landlord without the claimant's written consent, unless a rent allowance is being paid direct.
- 3.431 Landlords may supply information, for example they may tell you that a claimant is not paying rent, which leads to steps being taken to protect public funds, see *Third parties* above.
- 3.432 Authorities should avoid giving any information unless it is necessary to establish the relevant facts. Normally it should be enough to advise the landlord that the matter will be looked into. The matter should then be taken up with the claimant.
- 3.433 If a landlord has requested direct payment of a rent allowance and it is decided
- not to comply, notify the landlord
 - to pay a rent allowance direct
 - issue a decision notice to the landlord, with a copy to the claimant, which shows only the amount of HB to be paid. This will tell
 - ~ the claimant how much rent, if any, they must pay
 - ~ the landlord how much rent to collect, and
 - ~ both of them the date from which it is to be paid
 - tell the landlord how direct payments will be made. When the level of direct payment changes notify the landlord but do not give any further information without the claimant's consent
- 3.434 If direct payments stop on a change of address, do not give the previous landlord the new address without the claimant's written consent. For more information, see *HB/CTB Overpayments Guide*.

3.435-3.999