

Credit Services Association

Response to ICO call for views on
updating the data sharing code of
practice

1. Credit Services Association - overview

- 1.1 The Credit Services Association (CSA) is the only national trade association in the UK for organisations active in the debt collection and purchase industry. The CSA, which has a history dating back to 1906, has around 300 member companies which represent 90% of the industry, and employ 11,000 people. The membership also comprises specialist tracing agencies, in-house collection departments of large banks and utility companies, accountancy firms, law firms and all three major credit reference agencies.
- 1.2 The clients of CSA members include major financial institutions (such as banks and building societies), credit grantors, government departments and local authorities, utility companies and mail order businesses.
- 1.3 At any one time, the CSA's members hold up to £60 billion for collection, returning nearly £3 billion in collections to the UK per annum. As the voice of the collections industry, our vision is to build confidence in debt collection by making the entire process clear, easy to understand and less stressful for all those involved. Further information on the CSA can be found at: <http://www.csa-uk.com>.
- 1.4 The functions performed by CSA members are vital to the operation of the various sectors in which they operate. Unpaid debts cause damage to lenders / suppliers and to borrowers by adding costs to the system which result in higher prices for credit or goods/services. Serious problems with unpaid debt may also lead to restrictions in the availability of credit, particularly to consumers who may otherwise find it difficult to obtain cost-effective credit and therefore have a detrimental impact in the overall growth of the economy.

2. Feedback

- 2.1 The ICO's current Code of Practice around data sharing is an incredibly useful tool and provides a lot of helpful information for firms. However, as the Code is updated to reflect the changes in data protection law, we would welcome additional clarity in several areas.
- 2.2 We have outlined the specific areas where we would appreciate ICO guidance below; however, it is also clear that the Code will need substantial updates (or entirely new sections) in the following areas:
 - Data subject rights – particularly right of access, right to be informed and right to data portability. In terms of the right to data portability, we would welcome some clarity around how this applies across different sectors and whether it is primarily focused on utilities / services and changing providers.
 - Changes to processor-controller agreements, including requirements and responsibilities
 - Data Protection Officers – their responsibilities around data sharing; what firms without a DPO should do.
 - Modern technology and working practices – changes in the ways people work and the technology they use are one of the driving factors behind the change to data protection law, so this will need to be reflected in the Code of Practice e.g. working from home; flexible working; Bring Your Own Device.

- 2.3 The ICO has already produced guidance on these areas in different publications, so should be well-placed to incorporate and expand upon existing guidance in the Code.
- 2.4 Looking more specifically at the changes to legislation and the practices of our members, the following areas may benefit from the additional clarity or guidance that a Code of Practice can provide.

Ad-hoc / one-off data sharing

- 2.5 The current Code of Practice provides some example scenarios around data sharing and what constitutes best practice. In relation to ad-hoc and one-off data sharing, we find that one particular scenario can prove challenging for our members and supporting guidance from the ICO may help address the concerns and ensure a more flexible, customer-friendly approach.
- 2.6 CSA members will sometimes be contacted by a third party who needs to discuss the customer's account. For example, the customer may have had a medical emergency and be in serious ill health, or the customer may be serving in the armed forces and the third party is responsible for their mail. Unfortunately, if the customer has not provided, or is unable to provide, authority for the third party to act on their behalf, CSA members are unable to discuss matters with the third party.
- 2.7 In the absence of discussion, either with the customer or with a legitimately authorised third party, there could be negative consequences for the customer. The creditor may add further fees and charges or may decide to pursue legal action.
- 2.8 Given those potential consequences, we believe there are grounds in some instances to share information with a third party so that appropriate steps can be taken to help the customer – for example, advising the debt amount in order to take payment from a third party; explaining the status of the account and any information required if the customer is in ill health.
- 2.9 This flexibility would ensure that those involved in recovering debts can respond to the different circumstances of their customers and ensure better outcomes for those customers.
- 2.10 Of course, there should be sensible measures in place around disclosure to third parties and companies should implement suitable controls before disclosure. The disclosure outlined above should be on a case-by-case basis and any decision to disclose clearly documented, including the justification for that decision.
- 2.11 We would imagine that there are other financial services firms beyond our members who encounter similar circumstances, where ad-hoc or one-off data sharing would improve customer outcomes and is a reasonable and appropriate approach.
- 2.12 We would therefore welcome clarity from the ICO that in circumstances such as those described here, it may be appropriate to share data without the data subject's authority.

Right to be informed - exemptions

- 2.13 The current Code of Practice clarifies the exemptions that exist in UK law in relation to data sharing without the individual's knowledge.
- 2.14 The Data Protection Act 2018 retains exemptions to data subject rights in certain contexts (e.g. sharing for the purposes of recovering taxes and duties; sharing for the purposes of preventing fraud) and we would encourage the ICO to retain this clarity in any updated Code of Practice.
- 2.15 We believe the Code of Practice should provide clarity on the exemptions for the recovery of government debts and the prevention of fraud, money laundering and terrorist financing.

Human rights

- 2.16 Whilst the current Code of Practice already includes reference to human rights, it would be helpful for the ICO to provide additional guidance on the rights, outside of those granted by data protection legislation, that firms need to consider when ensuring their data processing takes account of the "rights and freedoms" of data subjects.

Privacy notices

- 2.17 Although there is no set template for providing the information required by Articles 13 and 14 of the GDPR, this Code of Practice provides an opportunity for the ICO to guide firms on the most appropriate way(s) to communicate information about data sharing, for example identifying recipient and / or categories of recipients of personal data within privacy notices.

Data sharing post-Brexit / post-Privacy Shield

- 2.18 We believe that it is essential the Code provides some examples of best practice for cross-border data sharing once the UK leaves the European Union, and the measures that firms should be taking now to prepare in the meantime.
- 2.19 At this point in time, it is unclear what safeguards are available to firms, especially in the case of a 'no deal' Brexit. Although standard contractual clauses exist in relation to previous data protection legislation, there is not presently a set of GDPR-compliant standard contractual clauses. We would appreciate clarity from the ICO on the validity of using the existing standard contractual clauses, in the absence of any revisions or updates for GDPR.
- 2.20 Whilst we understand the situation is subject to change as the government negotiates the exit from the European Union, we believe there should, at a minimum, be guidance for firms on any steps they can take to prepare now, particularly in relation to any existing international data transfers. The ICO's Code of Practice should also outline what measures firms can take in the worst case scenario of the UK leaving without a deal.
- 2.21 If this is not suitable for the Code of Practice, the ICO should consider releasing separate guidance on the UK's exit from the European Union to ensure UK firms are adequately prepared and understand all the options available to safeguard customer data and ensure compliance with the GDPR and Data Protection Act 2018.

2.22 Similarly, there are concerns about the stability of the EU-US Privacy Shield agreement, with it being subject to legal challenges. We would therefore welcome guidance on how firms should prepare should the Privacy Shield fall apart and how data transfers would continue.

Contact us

[Redacted]

T: [Redacted]

E: [Redacted]

Credit Services Association
2 Esh Plaza
Sir Bobby Robson Way
Great Park
Newcastle Upon Tyne
NE13 9BA

W: www.csa-uk.com
T: +44 (0) 191 217 0775
F: +44 (0) 191 236 2709

 Follow us
 @CreditServicesA