

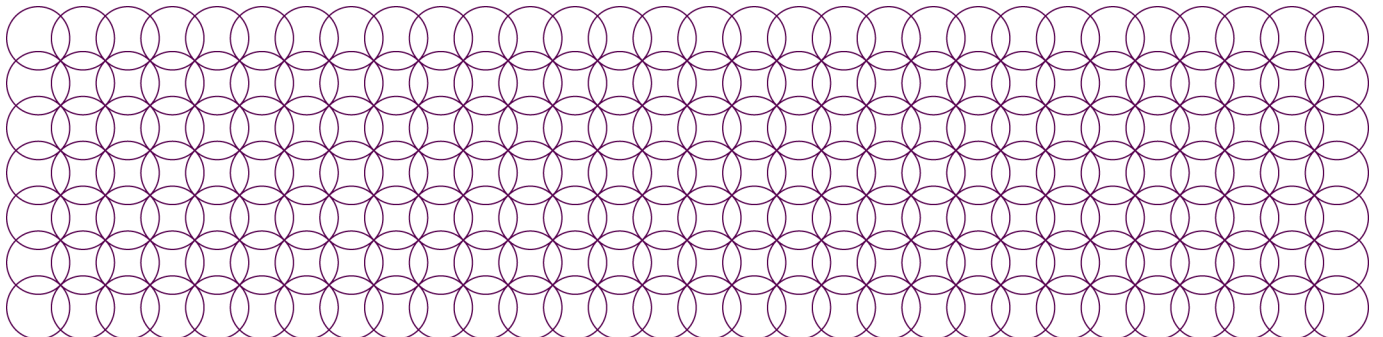


Ministry of
JUSTICE

Information Sharing Gateway – Fee Remissions

Privacy Impact Assessment Report

May 2012





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Contents

Section 1 – Executive Summary	5
Section 2 – Introduction	6
Section 3 – Information Sharing Gateway – Fee Remissions details	8
Section 4 – Data flow analysis	16
Section 5 – Data protection analysis and risk management plan	17
Section 6 – Communication/publication strategy	18
Section 7 – Approval of report	19

Section 1 – Executive Summary

Background

The Crime and Courts Bill proposes to create an information gateway for the Department for Work and Pensions (DWP) and the relevant Northern Ireland department to disclose data relating to entitlement to social security benefits and Her Majesty's Revenue and Customs (HMRC) to disclose tax credit, income and capital data with the Lord Chancellor, the UK Supreme Court and Public Guardian for the purposes of deciding fee remissions. The legal authority to share customer data with this purpose would result in a faster service for court, tribunal and Public Guardian users and provide a more cost-effective service.

Findings

This Privacy Impact Assessment sets out that the Crime and Courts Bill provides for information sharing between those persons who determine financial eligibility for a fee remission, the Secretary of State for Work and Pensions, the Commissioners for Her Majesty's Revenue and Customs, and a Northern Ireland Department. At present, this gateway would apply to the Secretary of State for Work and Pensions ("DWP"), the Commissioners for Her Majesty's Revenue and Customs ("HMRC), the Northern Ireland Housing Executive, the Department for Social Development for Northern Ireland, the Land & Property Services for Northern Ireland, and the Department for Finance and Personnel for Northern Ireland ("the Northern Ireland Departments").

This provision allows requests to be made for the disclosure of information, and for disclosures to be made, to enable or assist in the assessment of a person's financial resources, so as to ensure that they are financially eligible to receive a court, tribunal, UK Supreme Court or Office of the Public Guardian fee remission.

The Bill provides the circumstances in which information may be further disclosed and creates an offence of unlawful disclosure. The processes and systems used in the handling of personal data will replicate the well-established and robust practices already used by Her Majesty's Courts and Tribunals Service for handling personal data.

Review Process

The Privacy Impact Assessment will be reviewed by the Ministry of Justice after the first full year of the operation of the IT interface. When developing the IT interface, Ministry of Justice will ensure that the principles identified here are considered to help protect the personal data that will be collected and shared.

Section 2 – Introduction

Background

A Privacy Impact Assessment (PIA) is a process which helps assess privacy risks to individuals in the collection, use and disclosure of information. PIAs help identify privacy risks, foresee problems and bring forward solutions. The primary purpose of a PIA is to visibly demonstrate that an organisation acts responsibly in relation to privacy. The deliverables and benefits of undertaking a PIA can be summarised as follows:

- The identification and management of risk;
- Avoidance of unnecessary costs;
- Prevention of inadequate solutions;
- Avoiding loss of trust and reputation;
- Informing citizens and partners of the organisation's communications strategy;
- Meeting and exceeding legal requirements.

Objective

The objective of conducting this PIA is to identify any data protection issues with the proposed system for requesting and receiving information required to determine accurate fee remissions. It is important to remember that ultimately the focus of a PIA is compliance with the Data Protection Act (DPA). However, compliance with any other relevant legislation should also be considered.

Underlying principle

Data sharing and testing must be undertaken within a clear legal framework with any intrusion upon an individuals' privacy to be kept to a minimum. By undertaking a PIA we ensure this principle is met.

HMG requirement

The Data Handling Review, published in June 2008, states that all Departments will "introduce Privacy Impact Assessments, which ensure that privacy issues are factored into plans from the start, and those planning services are clear about their aims. Similarly, information risk management will be considered as part of the Government's "Gateway" reviews that monitor progress of the most important projects". The Data Handling Review has now been subsumed into HMG Information Assurance Standard No 6 – Protecting Personal Information and Managing Information Risk. Accordingly, PIAs are to be carried out on MoJ projects and policies that involve the processing of personal data.

PIA Process

The process for conducting a PIA is described by the ICO as follows:

1. Initial assessment (i.e. the Screening Process) – Examines the project at an early stage, makes an initial assessment of privacy risk and decides which level of assessment¹ is necessary. This has been undertaken and the subsequent report is referenced in this report.
2. Where necessary, conduct, either:
 - Full-scale PIA – a more in-depth internal assessment of privacy risks and liabilities. It includes the need to identify stakeholders, analyse privacy risks, consults widely with stakeholders on privacy concerns and brings forward solutions to accept, mitigate or avoid them; or
 - Small-scale PIA – Similar to a full-scale PIA, but is less formalised. Requires less exhaustive information gathering and analysis. More likely to be used when focusing on specific aspects of a project.
 - Review – Sets out a timetable for reviewing actions taken as a result of a PIA and examines their effectiveness. Looks at new aspects of the project and assesses whether they should result in an updated PIA.

This report deals with the PIA for an information sharing gateway between the Ministry of Justice's agencies, the UK Supreme Court, HM Revenue & Customs, the Department for Work & Pensions, and the Northern Ireland Departments for the purpose of determining whether an individual qualifies for the full or partial remission of fees.

¹ Full Scale PIA, Small Scale PIA or no PIA.

Section 3 – Information Sharing Gateway – Fee Remissions details

Overview

1. Her Majesty's Courts & Tribunal Service, the Public Guardian, and the UK Supreme Court provide fee remissions (full or partial fee waivers) to users of its fee charging services. In doing so, they ensure that access to justice is protected for individuals who are less well off.
2. Individuals who apply for certain fee remissions must supply a completed application form and hard copy proof of their receipt of qualifying state benefits. There is currently no legal authority, which allows those persons administering fee remissions to obtain the proof of the receipt of qualifying state benefits directly from the relevant Government departments.
3. This PIA examines the creation of a new information sharing gateway between the persons assessing remission applications and those administering qualifying state benefits. The legal authority for an information sharing gateway would enable the creation of an IT interface to provide rapid proof of whether the remission applicant is in receipt of a qualifying state benefit. This will play a key role in reducing the burden to both remissions providers in verifying documentation and to remissions users in having to obtain and provide required evidence to support their remission application.
4. The intended effects of the legal authority for an information sharing gateway are to:
 - verify remission eligibility quickly and accurately;
 - protect the taxpayer subsidy by limiting opportunity for fraud and dishonesty;
 - ensure that the remission system is targeted to those individuals who genuinely cannot afford to pay fees;
 - reduce the burden on courts, tribunals, and Public Guardian users to provide evidence of remission eligibility;
 - reduce the burden on DWP and HMRC to produce duplicate proof of benefit entitlement; and
 - ensure that the remission system will operate effectively once Universal Credit has been introduced.²

² As a result of the Welfare Reform Act 2012, most of the existing qualifying state benefits that “passport” certain remission applicants into a 100% fee waiver will be consolidated into a single new working age benefit known as Universal Credit (UC) from mid-2013/14 onwards.

5. A Screening Process for this information sharing gateway was completed on 2 February 2012. As a result, it was recommended that a full scale PIA should be completed. There are no pre-existing PIAs relating to this proposal.
6. The information sharing will be adequate, relevant and not excessive in relation to the administration of fee remissions. This will ensure an appropriate and defensible balance between the legitimate aims of improving the administration of fee remissions and the right to privacy. The applicant's National Insurance Number, date of birth and surname will be shared with the department administering the qualifying state benefit through an IT interface. This is the minimum amount of data needed to ensure the information provided by the qualifying state benefit provider is accurate. The data will be obtained and shared with the consent of the applicant. The fee remission provider will then seek a "real time" online check to confirm the state benefit status of the applicant.

System users

7. The information sharing involves two separate transfers of data between the fee remission providers and the departments that administer the qualifying state benefits.
8. The first set of data shared will be from the fee remission providers to the departments administering the qualifying state benefits. The information shared will identify users of fee remissions to the following groups:
 - The Secretary of State or a person providing services to the Secretary of State. At present, this would cover the Department for Work and Pensions (DWP).
 - A Northern Ireland Department or a person providing services to a Northern Ireland Department. At present, this would cover the Northern Ireland Housing Executive, the Department for Social Development for Northern Ireland, the Land & Property Services for Northern Ireland, and the Department for Finance and Personnel for Northern Ireland.
 - Her Majesty's Revenue and Customs (HMRC), or a person providing services to the Commissioners for Her Majesty's Revenue and Customs. At present, this would cover HMRC.
9. The second set of data shared will be from the departments administering the qualifying state benefits to the fee remission providers. The information shared will identify any individual's qualifying state benefit status, to the following groups:
 - The Lord Chancellor or a person providing services to the Lord Chancellor. At present, this would cover those persons administering fee remissions in Her Majesty's Courts and Tribunals Service HMCTS).
 - Any of the officers or staff of the UK Supreme Court.

- Any of the officers or staff of the Public Guardian or a person providing services to the Public Guardian. At present, this would cover those persons administering the fee remissions in the Office of the Public Guardian (OPG).
10. The information sharing will also apply to those instances where the administration of fee-related functions, state benefit functions, or tax credit functions are contracted out to other providers, with the exception of fee-related functions in the UK Supreme Court.
11. The information sharing allows only a limited number of the relevant persons to obtain and process the information for the specific purpose of administering fee remissions. The proposed IT interface will be password protected and located on a secure network. A criminal sanction will apply for the wrongful disclosure of customer information to help protect customer privacy.

Business case

12. The persons administering fee remissions will make a request to receive confirmation of whether an individual is in receipt of qualifying state benefits. This will include information on whether an individual is in receipt of:
- Income Support;
 - income-based Jobseekers Allowance;
 - Pension Credit guarantee credit;
 - income-related Employment and Support Allowance;
 - Working Tax Credit and Child Tax Credit information;
13. Most of these qualifying state benefits will be consolidated into a single new working age benefit known as Universal Credit from mid-2013/14 onwards. As a result of the Welfare Reform Act 2012, it has been estimated that around twice as many adults would be entitled to receive some element of Universal Credit than who are entitled to receive certain qualifying state benefits³.
14. An automatic fee remission for all those adults in receipt of Universal Credit would extend the scope of the fee remission system beyond those currently eligible through the receipt of qualifying state benefits. It is therefore expected that the current remission system would no longer be viable for Universal Credit recipients and that a new system for determining eligibility for fee remissions for this group will be required. A public consultation on the proposals to adapt the remissions system will be issued in due course. The statutory provision is therefore designed not only to confirm entitlement to existing benefits but also to provide for future information sharing needs to

³ This is based on the qualifying working-age state benefits used in HMCTS remission system all of which are due to be phased out by the introduction of Universal Credit: Income Support, income-based Jobseekers Allowance, income-related Employment and Support Allowance, and Working Tax Credit but not also receiving Child Tax Credit

ascertain eligibility for remissions based on Universal Credit information, including that underpinning how Universal Credit is calculated, for example data on an individual's income and capital.

15. In order to maintain access to justice and hence comply with Article 6 of the European Convention on Human Rights (the right to a fair trial), it is important that the data received on qualifying state benefits is accurate so that remissions are given to the correct persons. The remissions providers will collect and share the following information from the applicant, which will allow qualifying state benefit providers to accurately identify an individual:

- last name
- date of birth
- National Insurance Number

16. This information will be obtained from a completed remission application. The application will be retained and stored securely under lock and key. This will be marked as PROTECT under the Government's Protective Marking System. All documents will be destroyed after 1 year from the end of the relevant financial year.⁴ The destruction of fee remission applications will be carried out in line with guidance on the disposing of protectively marked material.⁵

17. When an applicant asks the remissions provider to return their documents to them then copies will be made and attached to the original application. This will be treated as protectively marked data.

18. A fee remission application may be refused where an individual does not sign a declaration of truth or where the details entered in the application are found to be incorrect. Where an application has been refused the documents will be returned to the applicant with a covering letter. This will be treated as protectively marked data.

19. The fee remission providers will maintain a remissions register for accounting and monitoring purposes. The registers will be retained securely and will be destroyed after a period of 7 years⁶. Currently sensitive personal data such as

⁴ The retention of these documents being necessary to allow for audit requirements to be fulfilled

⁵ Where a single evidence document is being returned then ordinary post will be used. Where more than one evidence document is being sent to a private, residential or non-DX address, the Royal Mail's Special Delivery service will be used. Where evidence documents are transferred to other courts/offices either for processing or storage, secure DX/tracked DX/Special Delivery will be used.

⁶ The data will be retained for 7 years so that it can be used for accounting, monitoring, auditing and forecasting of fee remissions. The information is published in the HMCTS Annual Report and End of Year Accounts and used to determine the impact of remissions on the Department's budget.

information about an individual's health is not collected as part of the remission application process; however, sensitive personal data may be contained within an individual's case files. Sensitive personal data will be dealt with in line with the well-established and robust practices already used by remission providers for the handling sensitive personal data.

20. The personal data obtained may only be used for the specified lawful purposes of administering fee remissions. There are limited circumstances in which information received for the purpose of deciding whether someone is eligible for a fee remission may be further disclosed. Further disclosure is only permitted where there is lawful authority, where that information has already been disclosed to the public with lawful authority, or where it is disclosed in a form such that information about an individual cannot be identified from it.
21. A criminal sanction is created for the unauthorised sharing of the qualifying state benefit information. The maximum sentence for this offence is imprisonment for a period of up to 2 years and/or a financial penalty. This offence is required as the existing provisions for unauthorised disclosure of personal information do not allow for a custodial sentence. The deterrent effect of having a criminal sanction with the threat of imprisonment is appropriate when protecting the use of confidential and personal data that are intended for the purposes of administering fee remissions.
22. The legislation will provide a statutory basis for the sharing of personal data. In addition, the fee remission application will seek the data subject's consent to process their data in this way. A statement on the remission application form would inform applicants that they can either:
 - a) allow fee remission providers to verify the information direct with DWP and HMRC, in which case they need to provide their National Insurance Number
or
 - b) give fee remission providers the required documentary evidence as issued by DWP/HMRC. This may be an official confirmation letter or award notice.
23. The fee remission provider will also issue a fair processing notice. This is an explanation of the reasons for requesting the data, the length that the data will be retained, and the process for requesting a copy or correcting their personal data.
24. In 2010/11, there were approximately 149,000 successful applications that related specifically to remissions granted through the receipt of qualifying state benefits (around 63 per cent of all successful remission applications). The information sharing will play a key role in reducing the burden to both fee remission providers verifying documentation and to remission users in having to obtain and provide required evidence to support their remission application. Equally, DWP (and HMRC) would benefit from data sharing as remission

applicants would not have to contact them for copies of benefit entitlement notices as is the case now.

Organisational relationships

25. The organisational relationships in this information gateway aims to ensure that personal data collected and shared is accurate. Only the information that may assist a fee remission provider to assess remission eligibility will be obtained and shared; the data sharing provision in legislation will detail what data can be sought, the reason for which it is sought, and the restrictions on disclosure.

Technology employed

26. The technology that will deliver the information sharing has not yet been designed or built. However, it is envisioned that the technology will be similar to the existing technology used by the Legal Services Commission (LSC) to assess an individual's eligibility to legal aid.⁷

27. Given the changes to the welfare system, which will phase out working tax and child tax credits administered by HMRC to replace them with Universal Credit, it is unlikely that the same technology will be available to verify HMRC qualifying state benefit recipients. It is also unlikely that the number of requests made in the Northern Ireland Tribunals and the UK Supreme Court will be in sufficient volumes to ensure that the same technology will be cost-effective. A suitable alternative will be developed for information requests made to HMRC and the Northern Ireland departments. This may involve a dedicated secure email account; the data transferred would be password protected with the password agreed in advance and not emailed.

28. Although, the technology to deliver the information sharing has not yet been designed it is envisioned that the following requirements will be met to enhance privacy:

- a) The data will be transferred on a secure network which will be protected by appropriated firewalls;
- b) All staff handling the data will have completed mandatory information assurance training;
- c) Specific guidance will be drawn up for staff handling this information to ensure they understand their obligations in respect of the relevant legislation;

⁷ The LSC currently share data with DWP through the Means Assessment and Appeals Tool (MAAT), a web based application used to record data about an individual's eligibility for legal aid. It may be possible to adapt the "benefit checker" part of this tool for the purposes of assessing eligibility to fee remissions through the receipt of qualifying state benefits administered by DWP.

- d) Personal data will not be kept longer than is necessary;
- e) Users will need to be authorised to use the system, which is controlled by user names and passwords;
- f) Users will be limited to a designated number of staff whose roles it will be to determine eligibility to fee remissions;
- g) Passwords will be changed regularly;
- h) A list of current users will be maintained;
- i) Users will be de-activated if they no longer have a business need to access the information;
- j) There will be an authentication process which confirms the authority to undertake the check;
- k) Information requests will only be authorised if they are made from a designated Internet Protocol (IP) address;
- l) Staff use will be monitored and audited;
- m) Information requests will only be completed if the personal data are matched with an applicant's record on the relevant department's database;
- n) If an applicant cannot be identified then "Undetermined" will be returned;
- o) Inactivity on the application will be logged;
- p) The technology employed will be automatically closed if there is no activity for a certain period of time; and
- q) The data will be retained and destroyed in line with the well-established and robust practices already used for handling personal data.

Legislation and policies

29. The Crime and Courts Bill will create a new information sharing gateway between the relevant persons determining eligibility to fee remissions and those administering qualifying state benefits. It will routinely allow staff to check financial eligibility for fee remission applications.
30. Access to this information will be limited and protected through the technology employed, the safeguards in place to protect privacy, and the provision for criminal offence for the wrongful disclosure of the information. The information shared will be limited to that data needed to assess fee remission eligibility to ensure an appropriate and defensible balance between the legitimate aims pursued and requirements of the Data Protection Act 1998 and Article 8 ("Right to Respect for Private and Family Life") of the European Convention on Human Rights.

Alternative solutions

31. No alternative technology solutions were considered. The option to implement an IT interface to verify remission eligibility has been considered against the options:
- i) to continue to verify remissions eligibility through hard copy proof of the receipt of current qualifying state benefits; and
 - ii) to means test all other applications on the basis of up-to-date hard copy evidence, including individuals in receipt of Universal Credit upon its implementation in mid-2013/14.

Solution adopted

32. The information sharing gateway will play a key role in reducing the burden to courts, tribunals, UK Supreme Court and the OPG in verifying documentation and to remission users in having to obtain and provide required evidence to support their remission application.

Data protection/risk reducing designs

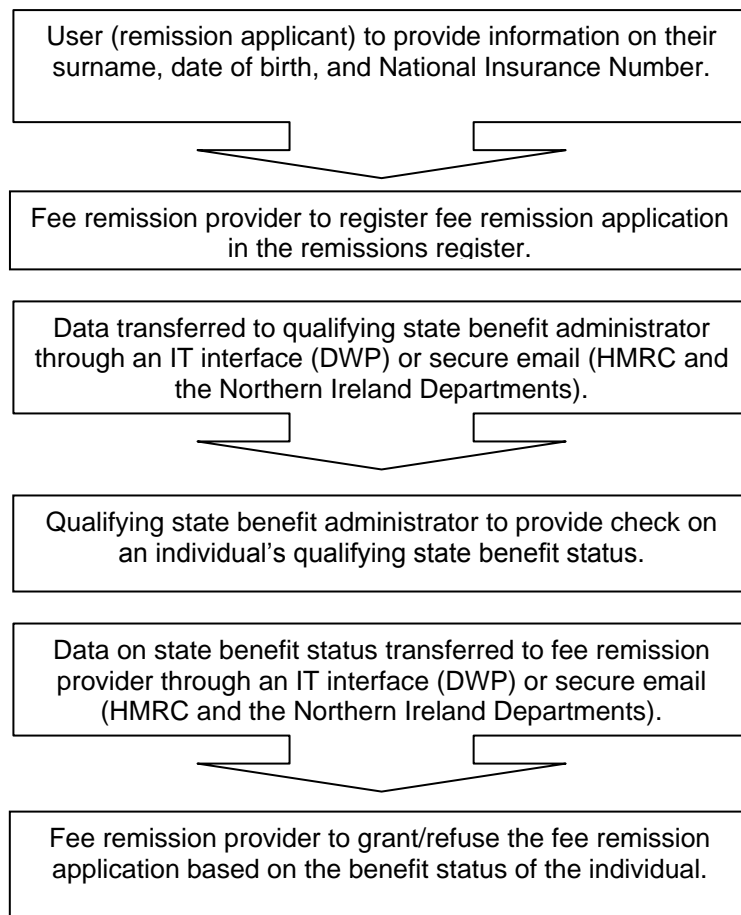
33. This solution requires the minimum of personal data to be obtained from the customer, and the minimum transfer of personal data between organisations.
34. A clear statement will set out how the information request will be made and why the applicant needs to provide their National Insurance Number.
35. A Memorandum of Understanding will be drafted to underpin and clearly define the responsibilities of the parties to the process, the standards and the administrative requirements.

Section 4 – Data flow analysis

Business data flow diagram and description

An outline of the proposed data flow arrangements can be found below.

Data flow table



Issues

A Memorandum of Understanding will outline the responsibilities of the parties to the process, the standards and the administrative requirements.

Section 5 – Data protection analysis and risk management plan

Stakeholders/participants

The following persons have been involved in the PIA process:

- Andrew Rowlinson – Fees Policy Manager in Ministry of Justice
- Jane Sigley – Head of Fees Policy in Ministry of Justice
- Angela van der Lem – Deputy Director, Access to Justice in Ministry of Justice
- Kate Burns – Head of Compliance in Ministry of Justice
- David Barlow – Data Access & Compliance Unit in Ministry of Justice

Analysis process

A Screening Process for this information sharing gateway was completed on 2 February 2012. As a result, it was recommended that a full scale PIA should be completed.

Analysis summary

The data transferred will be the minimum required for accurate verification of eligibility to fee remissions. The transfer of data will be over a secure password protected IT interface accessible by a limited number of persons. The data will be retained and destroyed in line with the well-established and robust practices already used for handling personal data.

Section 6 – Communication/publication strategy

Communications

This PIA is also available on the Ministry of Justice website:
www.justice.gov.uk.

Section 7 – Approval of report

Approval of:
Project / Policy / Initiative
Policy lead
Information Asset Owner
Date of approval

Angela van der Lem
Information Sharing Gateway – Fee Remissions
Andrew Rowlinson
Ministry of Justice, UK Supreme Court
16 April 2012

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