

10 April 2019

**Case Reference Number RFA0715409**

Dear Emma Cotton,

We write in relation to the concerns that you wrote to us about in relation to the DWP's approach to explicit consent for Universal Credit (UC) customers.

As you are aware, we approached the DWP for information about its policies in relation to representatives and appointees. It responded to me on 12 March 2019 providing us with the following public documents reflecting its approach:

<https://www.gov.uk/government/publications/universal-credit-detailed-information-for-claimants/universal-credit-consent-and-disclosure-of-information#consent>

[http://data.parliament.uk/DepositedPapers/Files/DEP2018-0759/Consent\\_disclosure\\_v14\\_0.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2018-0759/Consent_disclosure_v14_0.pdf)

<https://www.gov.uk/government/publications/universal-credit-detailed-information-for-claimants/universal-credit-consent-and-disclosure-of-information#appointees>

[http://data.parliament.uk/DepositedPapers/Files/DEP2018-0759/Appointees\\_PABs\\_and\\_CABs\\_v6.0.pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2018-0759/Appointees_PABs_and_CABs_v6.0.pdf)

Due to some absence from the office, it has taken me a month to properly assess the DWP's response and write to you and the DWP with my views.

We have formed the opinion that the DWP appears to be taking an unduly restrictive view of the definition of consent under data protection in relation to consent for authorised representatives to act on behalf of UC customers. The DWP has reported that it is the fundamental of its own design of the online digital account that is its reason for taking its restrictive approach to 'authority to act on behalf'. We have made clear that we feel the DWP's approach to consent for representatives is unduly restrictive and that we are not satisfied that the DWP's current approach constitutes data protection by design and by default.

The effect of this overly restrictive approach by the DWP is, in our opinion, likely to mean that people are at risk of significant prejudice as a result of excessive time being spent by DWP staff, representatives and individuals resolving authorities to act; peoples' (including vulnerable persons') legitimately authorised representatives' contact being refused by the DWP; vulnerable people being unable to obtain necessary assistance from representatives; and in some cases vulnerable people having an appointee established where this is not necessary or

appropriate.

We have observed that the DWP's 'consent' policy and guidance includes no preamble, or statement of intentions, highlighting the importance of ensuring that vulnerable persons are not prejudiced as a result of the interpretation of the DWP's policy on this topic.

We have advised the DWP that there ought to be room for flexibility when interpreting consent based the circumstances of the specific case, including causal links between the original matter for which consent was obtained and the matter then being raised, and any agreed reasonable adjustments required by that individual from the DWP. We have also observed that the DWP's policy omits any provisions for it to approach, or initiate contact with, an individual to clarify the extent of their consent where a matter for which consent has previously been obtained has expanded, or progressed, to a boundary of the scope of the previously obtained consent.

We have informed the DWP that the extremely short time limits prescribed for representative permission (seemingly 5-8 weeks normal maximum, but potentially limited to only a single 'query') advocated by the DWP's guidance leaves a high likelihood of valid authorities routinely expiring multiple occasions during the course of a single dispute or query between individual and DWP. We consider the short time limits imposed by the DWP's policy to be disproportionately restrictive, likely to be prejudicial to both vulnerable people and the representative process as a whole, and have recommended that these time limit restrictions to consent be revised urgently.

We have observed that none of the DWP's guidance for its staff, or for the public, involved in this case includes any templates, illustrative case studies, or other examples, to aid with the consistent practical interpretation of the guidance. We have expressed the opinion that the current guidance requires supplementation with practical examples in order to ensure a reasonable degree of consistency in how it is interpreted, in practice, by DWP officials. We have recommended that the DWP publish a ready-to-use template form, for explicit consent for a representative to act on behalf of an individual, alongside its published policy in this area.

We have indicated to the DWP that its absolute ban on the discussion of specified personal data with representatives is likely to require caveat for occasions when the specified personal data (that is banned from disclosure to representatives) is the direct subject of the matter being raised by the representative.

We, finally, observed in passing that the DWP policies that we have

examined in the course of this case made no reference to the DWP's duties in relation to in protected characteristic information arising from the Gender Recognition Act 2004 (GRA). It seems that the design of the online digital account may not be readily compatible with the DWP's duty to protect protected characteristic information under the GRA.

We have today written to the DWP asking it to revise its consent policies and internal guidance in consultation with its Data Protection Officer Team, and with reference to its legacy policies in this area. We have asked the DWP to take active steps to ensure that its policy works on a practical level for the individuals, their authorised representatives, and the DWP staff that need to enforce the DWP's consent policy consistently.

We have suggested that the DWP consider consulting with a sample, or representative, of representative bodies once it has completed this requested revision of its policy and guidance on consent.

It is now up to the DWP to take account of the advice it has been given and improve its information rights practices. Although we are closing our case file for this matter, and have not actively sought the DWP's written response, we will keep the concerns raised on file to help build up a fuller picture of the DWP's information rights practices and to allow us to monitor the DWP's progress in this area over time.

Thank you for bringing this matter to our attention. I apologise for the time we have taken to properly consider and form conclusions in relation to this matter. If you are dissatisfied with the service you have received from us, or would like to provide us with feedback of any kind, please let me know.

Yours sincerely,

Benedict Elliott  
Lead Case Officer