

Utility Regulator NI
Queens House
14 Queen Street
Belfast
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By email only: rachel.strong@uregni.gov.uk

15 September 2023

Dear Rachel,

Re: Best Practice Framework Consultation Proposals: Code of Practice for Consumers in Vulnerable Circumstances

The ICO welcomes the opportunity to respond to the above public consultation as a continuance of our engagement with your office over the past few years in relation to the Best Practice Framework.

The ICO recognises that the proposed Code of Practice (CoP) for Consumers in Vulnerable Circumstances aims to address current gaps across the three regulated utility sectors in Northern Ireland (NI) in regard to vulnerable consumers, and is designed to bring NI into line with best practice exemplars across other jurisdictions and related sectors. The CoP's high level principles and the changes to customer care registers will ensure that utility consumers in vulnerable circumstances are better identified, supported and protected. We welcome the CoP being aimed specifically at vulnerable consumers and the inclusion of a definition of vulnerability within the CoP, which has been given a wide interpretation. This work has strong links with the ICO's strategic plan, [ICO25](#), which aims to safeguard and empower people, particularly the most vulnerable in society.

- **Article 36(4) consultation**

As the proposed CoP is mandatory, and will be applicable to utility suppliers and Distribution Network Operators (DNOs) across the three regulated sectors in NI, we would like to draw your attention to the obligations under [Article 36\(4\) of the UK GDPR](#).

Article 36(4) of the UK GDPR imposes a requirement on Government Departments and relevant public sector bodies to consult with the ICO when developing policy proposals relating to the processing of [personal data](#). This includes:

- primary and secondary legislation;

- regulatory measures (such as directions and orders) made under primary or secondary legislation;
- statutory codes of practice; and
- statutory guidance.

As it is likely that the proposals outlined by the Utility Regulator NI (URegNI) in the CoP will meet this requirement, you must complete our Article 36(4) [Enquiry Form](#). Instructions on completing this are included on the form and in the accompanying guidance. As part of our engagement with you under the Article 36(4) consultation process, we will often ask to view your [data protection impact assessment \(DPIA\)](#), as this can form an integral part of the consultation we carry out.

DPIAs are an essential part of a controller's accountability obligations and will help to systematically analyse, identify and minimise the data protection risks of the CoP and customer care registers. If the personal data processed under the proposals should pose a [high risk to the rights and freedoms of individuals](#), you will be required by law to complete a DPIA. Completing a DPIA is also considered to be best practice when the processing does not pose high risks.

We would like to draw your attention to some topic areas which will be important to consider as part of your DPIA:

- **Data protection by design and default**

The implementation of this CoP will involve the processing of personal data, some of which will constitute special category data, so it is important that the proposed approach and its implementation is read in conjunction with data protection legislation. Data protection should be embedded throughout the process by [design and default](#), to ensure that the organisations involved are accountable for how their processing complies with data protection legislation.

We welcome the CoP's creation of vulnerability teams within the organisations involved, and the requirement for them to have [senior representation](#). We also note that the CoP refers to [staff training](#) to help identify customers in vulnerable circumstances. Staff training will be a key element of the CoP and must be in place as part of the initial rollout and regularly refreshed thereafter.

The above are just some examples of how important it is for data protection to be embedded into the lifecycle of this piece of work.

- **Controllers and processors**

An important aspect of the DPIA will be to ascertain who the [data controllers, joint controllers and processors](#) are in relation to the data processing. Carrying out a data mapping exercise may be particularly useful in this respect, and it will help URegNI and the utility suppliers/DNOs bound by the CoP to understand the flows of data. This will be of particular importance when implementing the customer care registers.

- **Lawful basis**

We would welcome clarification on the [lawful basis](#) being relied upon for the processing involved in the implementation of the CoP. This is particularly pertinent in relation to the customer care registers. The CoP refers to organisations providing “relevant and lawful details of domestic customers who are of pensionable age, disabled or chronically sick (medical care register), or fall under vulnerability definition and wish to be included on the list”. With this in mind, careful consideration must be given as to whether [consent](#) would be an appropriate lawful basis for the processing. This is because situations may arise where a customer does not give their consent to be included on the list, even though that decision might not be in their best interests. This could have a negative impact on the customer and result in harms occurring if, for example, they have medical needs.

- **Special category data**

The CoP outlines the proposed introduction of a two tier customer care register of medical care and needs based for vulnerable consumers. If [health information](#) relating to consumers is being collected, or can be inferred from the information collected, this will constitute [special category data](#). The UK GDPR gives extra protection to this type of data as it is more sensitive in nature, therefore, in addition to an applicable [lawful basis](#), any relevant controllers must also have a [condition for processing](#) in place.

- **Data sharing**

The implementation of the CoP and customer care registers will require the cross-industry sharing of consumer data between suppliers, DNOs and other third parties. It appears that this will take place on a regular and/or large scale basis, therefore [data sharing agreements](#) will be required and you may find it useful to consult our [data sharing code of practice](#).

- **The data protection principles**

Compliance with the seven [data protection principles](#), specifically [data minimisation](#), [accuracy](#) and [storage limitation](#) will be key to ensuring the personal data processed under the CoP will be adequate, relevant and limited to what is necessary, up to date and accurate, and kept for no longer than required. The [integrity and confidentiality principle](#) will also be important to safeguard the security of personal data and in particular, any sensitive health information held under the customer care registers. Detailed guidance on data security can be found [here](#).

- **Privacy and Electronic Communications Regulations 2003 (PECR)**

We have noted that some of the CoP's high level principles and required measures compel utility suppliers/DNOs to contact and target customers, for example, to "provide advice and information on the additional services available." It will be important to consider whether the implementation of the CoP will require utility suppliers/DNOs to undertake direct marketing. If this is the case, PECR may be applicable to the processing and you may find it helpful to review our detailed guidance on [PECR](#), including our guidance on [direct marketing and the public sector](#).

The above are some of the areas that we can explore further with you as part of our engagement under the Article 36(4) consultation process. Please note that the points noted above are not exhaustive, and it is important that URegNI ensures the CoP and the resulting data processing is compliant with all aspects of data protection law. Please consult our [Guide to the UK GDPR](#) for more detailed guidance.

We look forward to hearing from you. Please do not hesitate to get in touch if you have any further questions.

Yours sincerely,

Lauren Newell
Lead Policy Officer – Northern Ireland