

**GDPR – HE Marketing Advisory
Group – 26th September 2017
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New Privacy legislation

- Significant changes to Data Protection and Privacy Legislation will come into effect on 25th May 2018
 - General Data Protection Regulation (GDPR) & Data Protection Bill
 - Updated e-privacy Directive (time to be decided)
- New legislation provides the following:
 - Enhanced rights for individual – including rights in respect of direct marketing and profiling
 - Additional obligations for organisations
- The presentation focusses on:
 - what key aspects of the legislation means for the sector, and
 - what UCAS is doing to prepare
- With a view to identifying concerns or possible future action

Disclaimer! – This is not legal advice! 😊

'Direct Marketing'

- Communication of any advertising or marketing material aimed at specific individuals
 - covers promotional material, including that promoting the aims and ideals of not for profit organisations
 - Does not cover genuine market research/operational messages or service/operational messages
- UCAS context:
 - Covers emails promoting our services, communications on behalf of commercial partners
 - Does not cover end of cycle survey or prompts to take action to support the admissions process
- Provider Context:
 - Covers emails promoting your services, or course opportunities
 - Does not cover emails asking an applicant to attend an interview

GDPR – Privacy Information

- GDPR is more explicit (and has more requirements) about what ‘privacy information’ you have to provide to individuals:
 - Enhanced information about data uses, including marketing/profiling
 - Provide explicit information about what rights they have
- When people provide personal data, you must notify them of:
 - Identity of the data controller & DPO contact details
 - Purposes for which their data are processed and ‘legal basis’
 - Recipients of personal data (who it is shared with)
 - Retention periods for personal data
 - Rights in respect of their personal data, including right to request deletion, access, to opt-out of direct marketing and the existence of automated decision making/profiling and their rights to object to it
 - Potential implications of data processing
- This list does not reference every requirement!

GDPR – Privacy Information

- Article 39 – privacy information must ‘be easily accessible and easy to understand, and that clear and plain language be used
- Many of these obligations also apply where personal data is provided by a third party, such as the personal data UCAS supplies in respect of:
 - Learners who have applied through our admissions schemes
 - Learners who have attended UCAS Events and opted to share with personal data with providers via the scanners
- Ongoing work at UCAS
 - working group reviewing privacy policy and how we make uses of personal data as clear and as easy to access as possible, including uses to support marketing
 - Our privacy information references our uses and sharing with providers for purposes of admissions decision
- Providers
 - ensure marketing uses are covered in your privacy information and that individuals’ rights (profiling/direct marketing) are made clear
 - Ensure there is a process for providing privacy information to learners as soon as possible once you obtain their personal data

Basis for Processing – Article 6

- You must publish your GDPR ‘basis for processing’ – consistent with Article 6 of GDPR – these includes processing:
 - Necessary for the fulfilment of Contract
 - In the public interest
 - In an organisation’s legitimate Interests
 - With the individual’s consent
- Historically - an organisation might have assumed that they rely on consent to process personal data – learners agree to submit personal data to support an application
- This is likely to change in the post GDPR world, as there are significant risks where you solely rely on consent to process personal data

Disadvantages of relying on consent

- The GDPR consent requirements are very strict, it must be:
 - Unbundled – separate from other terms and conditions
 - Granular – very specific
 - As easy to withdraw as it is to provide (at any time)
 - No imbalance in the relationship
 - A pro-active opt-in (e.g. ticking a box to signify consent, next to a clear explanation of what the consent is for)
 - Need to retain evidence that consent was provided
- ICO consent guidance – restrictive – don't rely on consent if other grounds exist
- Impact on direct marketing – if you are going to rely on consent, are you going to have to make changes to your opt-in processes?

GDPR & Marketing - Legitimate Interests/Consent

- Processing personal data for direct marketing may be regarded as carried out for a legitimate interest of the data controller/third party 'except where such interests are overridden by the interests or fundamental rights...of the data subject'
- Is there an existing relationship? Does the direct marketing relate to the services you offer? Would the data subject expect to receive the type of direct marketing sent? If not, legitimate interests unlikely to apply - consent will be required
- If you rely on legitimate interests – publish why this is the case
- UCAS approach
 - information about our products/services and opportunities for unplaced learners from providers – legitimate interests
 - Products/services from commercial partners – consent
- Consent/Legitimate interest – rights to object/opt-out of direct marketing remains

Basis for Processing – UCAS’ proposed approach

Fulfil Contract with Learner	‘Public Interest’ Processing	Value added processing using additional consent	‘Legitimate Interests’
Provision of personal data from a learner to support an application/sharing of this information with providers to enable an admissions decision to be made	Processing of personal data to support A&R functions to inform the sector and sharing with external bodies with statutory or regulatory responsibilities for the sector	Sharing personal data with HEPs as part of the Direct Contact Service offering	Issuing ‘direct marketing’ to advisors about relevant product and service (opt-out/unsubscribe permitted)
Processing of personal data necessary to support the operation of the admission schemes, e.g. provision of examination results from awarding bodies and the sharing of this data with the HEPs	Sharing of personal data with providers for reporting requirements/enhancing their understanding of their admissions processes	Issuing ‘direct marketing’ – information from third parties about products and services	Issuing ‘direct marketing’ information about courses from HEPs to learners who find themselves unplaced (opt-out/unsubscribe permitted)

Automated Decision Making/Profiling

- Decisions ‘based solely on automated processing, including profiling, which produces legal effects’ (or similar)
- Rights to be notified and rights to object
- Not an exact science, however:
 - Use of algorithm/analysis or potential prediction from the data would be suggestive of profiling,
 - Using the personal data to predict what other products and services people might be interested in
 - If UCAS were to identify individuals likely to be unplaced based on characteristics from previous cycles
- Doesn’t apply to ‘segmenting’ e.g. targeting contact/content based on course choices or location

Automated Decision Making/Profiling

- There are exceptions to this right – it does not apply where it is necessary for entering into a contract – UCAS example would be the Direct Contact Service
- These rights must be made clear to individuals at the time personal data is obtained – purpose is to enable people to use their rights, including the right to obtain human intervention and to challenge decisions
- UCAS – reviewing processing we undertake that would be classed as Automated Decision Making/Profiling (including for marketing purposes) and ensuring that is contained within our privacy notices

'Right to be forgotten'

- GDPR includes statutory right to request permanent deletion of personal data
- Not an absolute right - applies where an individual withdraws consent and there is no overriding legitimate interest to continue processing
- Does not apply where retention is necessary for:
 - Archiving purposes, research or statistical purposes
 - Compliance with a legal obligation
 - Defence of legal claims
- Likely retention justification for ensuring suppression lists are up to date

E-privacy regulation

- Users to be given more control of privacy sensitive information stored on their devices
- Browser settings to allow easier way to allow or refuse cookies
- Certain cookies won't need consent (analytics, improving experience)
- Clearer rules on 'tracking' for online ads
- Tighter rules on marketing calls
- The e-privacy regulations were originally intended to come into force at the same time as the GDPR – this currently looks unlikely and UCAS preparations are at an early stage

What next?

- UCAS would welcome views on what we need to consider from a GDPR/e-privacy perspective



Thank you

UCAS