

Waterways Ombudsman Scheme – compliance with the EU General Data Protection Regulation (GDPR)

From 25 May 2018 the Scheme is covered by the GDPR. This includes a range of measures governing who may process personal data, by what means and for what purposes.

Personal data is data about individuals (also known as data subjects) who contact the Scheme in connection with a complaint or enquiry, and includes information such as name, address, contact details, correspondence and conversations with the Scheme, as well as any evidence provided by complainants/enquirers or the organisation they are complaining about.

Article 5 of the GDPR lists six principles for the lawful processing of personal data, which are that it must be:

1. processed lawfully, fairly and in a transparent manner in relation to individuals;
2. collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes;
3. adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed;
4. accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
5. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes;
6. processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

Article 6 of the GDPR states that processing of personal data shall be lawful if at least one of six criteria applies. The only two relevant to the Scheme are that:

- the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

The Information Commissioner's Office (ICO) states that legitimate interest is likely to be most appropriate where people's data is used in ways they would reasonably expect and which have a minimal privacy impact, or where there is a compelling justification for the processing. It adds that there are three elements to the legitimate interests basis and that a data controller needs to:

- identify a legitimate interest;

- show that the processing is necessary to achieve it; and
- balance it against the individual's interests, rights and freedoms.

The way the Scheme operates is that complainants or enquirers ask the Ombudsman to consider an unresolved complaint, or to take some other action such as to provide advice and guidance. The Ombudsman becomes involved, and will process data, only at the request of the person bringing the complaint or enquiry to him, and within the Rules of the Scheme. **This is a legitimate interest.**

What information does the Scheme hold and how is it used?

The Scheme holds personal data about persons who have asked the Ombudsman to intervene in a complaint, or who have made a general enquiry or request for advice and guidance. The personal data is that which is deemed necessary to enable the Ombudsman to fulfil his duties under the Rules of the Scheme. Information is requested from the data subject and from the organisation which is the subject of the complaint or enquiry. No information is requested which the Ombudsman does not have good reason to believe may be necessary in order to fulfil his duties.

The Scheme is an independent entity. It does not have direct access to any personal data held by any organisation within its scope, nor do any of those organisations have direct access to any personal data held by the Scheme.

Personal data are routinely shared only with:

- the body which is the target of the complaint (e.g. the Trust);
- any relevant person or organisation involved in the situation which is the subject of the complaint/enquiry (but only with the consent of the data subject, e.g. a local authority);
- Survey Monkey for the purpose of the customer service questionnaire;
- independent members of the Waterways Ombudsman Committee (Trust members are covered by the first category).

Personal data are also shared on an ad hoc basis with:

- the Chartered Trading Standards Institute (CTSI) for accreditation purposes;
- the Ombudsman Association (OA) where a data subject has made a complaint to it.

Any personal data provided to the CTSI or the OA will be on the basis of legitimate interest.

The Ombudsman Association does not ask to see personal data in connection with its validation process.

All of the above types of sharing or processing are necessary to achieve the aims of the Scheme. Any organisation within the jurisdiction of the Scheme, as well as Survey Monkey, independent members of the Committee, the CTSI and the OA are subject to the GDPR. **No processing is undertaken which is not deemed to be necessary.**

Others involved in the enquiry or complaint may or may not be subject to GDPR; an individual person will not be. There may also be occasions where the data subject provides personal data which he or she does not wish to be disclosed to other parties. In some cases the Ombudsman may consider that the sharing of any such personal data will impair his ability to carry out his duties, in

which case he may seek the consent of the data subject to share the information. **In all cases, the Ombudsman balances the need for processing against the individual's interests, rights and freedoms.**

The only normal instance in which a complainant may receive a communication, about the investigation, from a person other than the Ombudsman or another party involved in the case, is where the Ombudsman asks the complainant to complete a customer service survey questionnaire. This may be regarded as necessary processing, bearing in mind the overall aims of the Scheme. **However, given that the request email will come from Survey Monkey, and not the Ombudsman, it is considered to be more appropriate to seek the explicit consent of the data subject before issuing a request to complete the survey.**

Data retention

Personal data will not be kept longer than is necessary. Once a case or an enquiry has been closed, personal data will be retained for the following periods:

- in the case of enquiries where the Ombudsman does not carry out a formal investigation, any electronic or paper records are securely deleted or destroyed 12 months after the last contact with the enquirer;
- full case files are securely deleted or destroyed 12 months after the last communication from the complainant after the case has been closed, or six months after the publication of the annual report covering the date on which the final decision was issued, if later;
- Ombudsman final decisions are kept permanently.

Subject Access Requests

Data subjects have the right to request a copy of their personal information and for it to be corrected if appropriate. Charges may be made if the request is manifestly unfounded or excessive. Charges will not otherwise be made. The Ombudsman has a month to comply with the request.

Right of request for personal data to be erased or amended

Data subjects can request that their data be erased. Such a request would mean that any investigation or enquiry would have to be discontinued. The Scheme is not obliged to agree to a request for erasure of personal data, but a request would not unreasonably be refused. For example, final decisions are kept indefinitely, and are a potentially valuable resource for future decisions. Data subjects can also request that their data be amended.

Awareness

The Ombudsman has no staff. The Waterways Ombudsman Committee has been made aware of the change in law and the impact this will have.

Data Protection Officer

The Waterways Ombudsman Scheme does not need to have a DPO.

Dealing with data breaches

Appropriate measures have been taken to protect data and ensure its security, but the possibility of a data breach cannot be completely ruled out. If a data breach is discovered, which is likely to result in a risk to the rights and freedoms of individuals, it must be reported to the ICO within 72 hours where feasible. Where there is a high risk, individuals must also be notified. Any breaches will be documented. Given the nature of the Scheme it is not necessary to have a documented and disseminated policy or procedure.

International

The Scheme is registered with the EU ODR (on-line dispute resolution), because the Trust's licence application webpage can be accessed and used from other EU Member States. However, the Waterways Ombudsman Scheme operates in only one Member State, and so there are no implications for the Scheme as far as the GDPR is concerned.

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