



The Rental Exchange

Data Protection considerations for the sharing of tenant data



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Experian, in partnership with Big Issue Invest (BII), opened up dialogue with the Information Commissioners Office (ICO) in October 2010. The purpose of these discussions was to ensure the sharing of rental payment data is fully compliant and fair to the tenant; this has resulted in a notification process for tenants that has been reviewed by the ICO and considered acceptable.



Conditions for processing tenant data: Consent and 'Legitimate Interests'

The Data Protection Act 1998 (DPA 1998) requires an appropriate processing condition to be satisfied¹ in order for any data processing to occur. The DPA 1998 identifies six equally valid processing conditions in total². The processing condition that most people are aware of is consent, but consent is often very difficult to achieve and therefore should not be looked at as the only basis for legitimate sharing and processing of data. The ICO states in the "Guide to Data Protection"³:

In discussions with the ICO regarding the Rental Exchange, it was agreed that the appropriate processing condition for Rental Exchange was the 'legitimate interests'⁴ condition.

Two requirements need to be satisfied for this condition to apply;

- The processing must be necessary for the legitimate interests of the housing provider and;
- These interests must be balanced against the interests of the tenant. If the processing is prejudicial to the rights, freedoms or legitimate interests of the tenant then it is likely the requirements of this condition will not be met⁵.

In the context of the Rental Exchange, there is no doubt the processing of tenant data is necessary for the legitimate interests of the housing provider. Furthermore given the clear and tangible advantages to tenants resulting from the sharing of their data into the Rental Exchange, it could not be considered to be harmful to their interests either. There is no intention or desire to share data into the Rental Exchange on any tenant who objects; should this occur the housing provider should inform the tenant of the advantages of sharing and if the tenant still objects, they must comply with the wishes of the tenant.

“Consent is first in the list of conditions for processing set out in the Act, but each condition provides an equally valid basis for processing personal data.”

In practice, it is worth noting that Credit Reference Agencies typically rely on the 'legitimate interests' condition when sharing data across sectors (e.g. financial services; telecommunications; utilities etc). This is because consent (as expected under the DPA 1998) can be so difficult to achieve and often undesirable given it can be withdrawn at any time, therefore having significant impacts on the credit referencing model. Therefore there is strong evidence to support the use of 'Legitimate Interests'.

— 1: DPA 1998 Schedule 1 Part 1 (1)

— 2: DPA 1998 Schedule 2

— 3: Section B(9)

— 4: DPA 1998 Schedule 2 6(1)

— 5: ICO "Guide to Data Protection" Section B(9)

Information to be provided to tenants: Fair Processing Notice (FPN)

For sharing of rental payment data into the Rental Exchange to be considered fair to tenants, clear and comprehensive information about the purpose of the data sharing must be given to the tenants by housing providers.

Underpinning this is the requirement under the DPA 1998 to provide detailed 'fair processing information' (or 'Fair Processing Notice' (FPN)) to data subjects (tenants in this case).

This information should notify the data subject about what data will be shared, who it will be shared with and for what purposes. Experian and BII have discussed the wording of the FPN with the ICO and comments provided by them have been taken into account in the final version developed for the Rental Exchange:

In practice, for current tenancy agreements, a new FPN or an amendment to an existing FPN (which may have been provided to the tenant at the point they entered into their original tenancy agreement) will need to be provided to the tenant before any tenant data can be shared into the Rental Exchange.

This amendment can be communicated via a notification given in a letter or email to tenants, depending on the tenants preferred method of communication. It is acceptable not to have to provide an option for tenants to opt out, but as stated previously; should a tenant object to their data being shared the housing provider should inform the tenant of the advantages of sharing and if the tenant still objects, they must comply with the wishes of the tenant.

For new tenancy agreements (including renewals), the Data Protection disclosures provided as part of the agreement will need to be amended to include the FPN wording stated above.



Not only will we be able to work with you more closely to manage your existing tenancy agreement, your track record as a tenant will enable Experian to use the information supplied to them in the future to assist other landlords and organisations to:

- Assess and manage any new tenancy agreements you may enter into;
- Assess your financial standing to provide you with suitable products and services;
- Manage any accounts that you may already hold, for example reviewing suitable products or adjusting your current product in light of your current circumstances;
- Contact you in relation to any accounts you may have and recovering debts that you may owe;
- Verify your identity and address to help them make decisions about services they offer; and
- Help prevent crime, fraud and money laundering.

ICO commentary

The ICO was approached about Rental Exchange in October 2010 and has had the opportunity to comment on data protection and privacy issues throughout the development of the project.

It is anticipated that many of the housing associations considering using Rental Exchange will have similar queries relating to the Data Protection Act 1998 (DPA). For this reason, the ICO has addressed some of the common issues here. This is not an ICO endorsement of the Rental Exchange Project, it is a reflection of the advice that the ICO has provided to Rental Exchange and Experian since October 2010.

Much of the discussion has focussed on the justification for sharing tenant's rental payment information. Above all else, data sharing must be fair, as well as satisfying the relevant conditions for processing. One such condition is consent, but gaining consent from data subjects is one of several other equally valid conditions for processing available under the DPA. The ICO is aware that the 'legitimate interest' condition is being used in the context of Rental Exchange and the justification for this is explained by Experian above.

Despite the use of the 'legitimate interest' condition, the ICO is pleased to note that if a data subject does not want their data to be shared through Rental Exchange (having weighed up the benefits), their objection will be respected. This enhances the data subject's control over the use of their data and the general fairness of the project.

The ICO is satisfied that discussions over the project reflect Big Issue Invest and Experian's understanding that a critical part of fulfilling the requirements of the 'legitimate interests' condition is to be absolutely transparent with tenants about how their data will be used.

The Fair Processing Notice has been developed by Experian and Big Issue Invest and the ICO's comments have been taken into account and incorporated into the final draft.

Any housing association that previously informed existing tenants that their data will not be shared with CRAs or similar third parties should consider this when moving to Rental Exchange. This point was raised during discussions but it was considered unlikely to be relevant in most cases. Nonetheless, it should be considered by housing associations that are considering processing existing tenant's data in new ways.

In addition to discussions about Rental Exchange, Experian has provided the ICO with updates on the project at regular liaison meetings.

The ICO looks forward to continuing discussions as the project develops (February 2014).



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