

## Agenda Item 4

### Legitimate Interests Assessment for conducting and storing major donor and major donor prospect research

<b>Meeting</b>	Fundraising Committee
<b>Agenda item</b>	4
<b>Prepared by</b>	Peter Reynolds and Julia Czastka
<b>Date prepared</b>	16 April 2019
<b>Date of meeting</b>	23 April 2018
<b>Action requested</b>	Approval

<b>Purpose</b>	To request approval of Concern UK's Legitimate Interests Assessment (LIA) for conducting and storing research into major donors and prospective major donors.
<b>Key points</b>	<p>Understanding the interests, motivations and capacity to give of our major donors and prospective major donors is crucial to any effective major donor fundraising programme. This often requires gathering information from public sources, not supplied by the individual concerned. Obtaining personal data from a source other than the individual creates additional requirements under the GDPR and it is therefore necessary to establish a legal basis to justify this form of data processing.</p> <p>Legitimate Interests is the only practical legal basis available to us. Establishing a legitimate interest as a legal basis for processing data requires the Data Controller (i.e. Concern UK) to conduct a balancing exercise that evaluates its legitimate interests against the rights and reasonable expectations of the data subject. This is called a Legitimate Interests Assessment (LIA).</p>
<b>Recommended outcome</b>	Approval of this LIA.
<b>Status of discussions to date</b>	<p>The LIA has been prepared in consultation with Concern UK's Compliance Officer and Concern Worldwide's Data Protection Officer. It has also been reviewed by our data protection advisors Opt-4.</p> <p>We have also consulted the following guidance:</p> <ul style="list-style-type: none"> <li>• 'GDPR: Lawful basis for processing: Legitimate Interests' published by the Information Commissioners Office</li> <li>• 'Connecting people with causes: a practical guide to fundraising research' published by the Institute of Fundraising</li> </ul>

<p><b>Implications</b></p> <ul style="list-style-type: none"><li>• <b>Budget/cost</b></li><li>• <b>Accountability</b></li><li>• <b>Legal</b></li></ul>	<ul style="list-style-type: none"><li>• Compliance with data protection legislation and the GDPR is vital to protecting Concern UK's reputation with our supporters and the wider public.</li><li>• Substantial fines may be imposed by the ICO on organisations that fail to comply with data protection legislation and regulations.</li></ul>
<p><b>Risk assessment</b></p>	<ul style="list-style-type: none"><li>• Failure to carry out a LIA would leave Concern UK exposed if investigated by the ICO or Fundraising Regulator.</li><li>• The collection and storage of inappropriate or unnecessary information on donors could expose Concern UK to reputational risks and damage relationships with donors.</li><li>• Note that the Fundraising Regulator recommends that charities publish their LIAs on their websites.</li></ul>

## Legitimate Interests Assessment for conducting and storing major donor and major donor prospect research

### Background and rationale for recommended approach

Conducting research into donors is an important and established activity across the voluntary sector, but this is defined in data protection legislation as processing personal data and under GDPR Concern UK therefore needs to establish a legal basis for doing so.

The legal basis options available are essentially 'Consent', which would require an explicit 'opt in', or Legitimate Interests. Of these, we believe Legitimate Interests is the only viable option. For example, gaining consent from a major donor prospect with which the charity has had no contact would be inefficient and could be inappropriate.

The ICO has published a guidance document on Legitimate Interests within the GDPR and advises that processing will be lawful where:

*'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'.*

The guidance also states that: *'If you choose to rely on legitimate interests, you take on extra responsibility for ensuring people's rights and interests are fully considered and protected'*. In practice this means that the Data Controller is required to consider the balance between its own legitimate interests and the rights and interests of the individual through a Legitimate Interests Assessment (LIA).

The LIA format recommended by the ICO contains three key sections:

1. Purpose test: are you pursuing a legitimate interest?
2. Necessity test: is the processing necessary for that purpose?
3. Balancing test: do the individual's interests override the legitimate interest?

The attached draft LIA aims to provide all the information the Committee needs to assess whether they are comfortable that it establishes a Legitimate Interest for Concern UK in conducting major donor research that is not overridden by the interests, rights and expectations of the individuals being researched. However, transparency and clarity with supporters is a vital aspect in justifying our approach to research, the following background information may be useful:

- Concern UK sets out its approach to carrying out research and storing information about its donors in our Privacy Statement ([www.concern.org.uk/privacy](http://www.concern.org.uk/privacy)). This is our primary means of providing transparency.
- The Privacy Statement also informs supporters that they can opt out of this activity and shows them how.
- We recognise that simply providing our Privacy Statement on the Concern UK website is not enough and that we are required to take proactive steps to make our supporters aware of it. The key ways we have done this over the past year, and will do so going forward, are as follows:
  - Our Privacy Statement is available on the Concern UK website and Concern Gifts website.

- Our marketing contact permissions disclosure statements draw attention to the Privacy Statement on all fundraising communications (for example here: [www.concern.org.uk/checkout/8632927](http://www.concern.org.uk/checkout/8632927) )
- We included a section on 'Protecting Your Privacy' in the January 2019 Supporter newsletter and will continue to do so in all subsequent editions - including newsletters specifically produced for major donors.
- We emailed our full email contact list to draw attention to our Privacy Statement in the summer of 2018 and will repeat this at least once a year.

For clarity, these activities do not mean that we have publicised the existence of our Privacy Statement to every contact on our database - for example supporters for whom we have no email and address and who have opted out of mailed communications are unlikely to have received a communication about it. However, we believe that we have taken steps to do so that are proportionate and therefore comply with the GDPR.

Clearly, prospective donors that have had no prior contact with Concern will not have seen our Privacy Statement and therefore need special consideration. Institute of Fundraising guidance states that charities should ensure they inform these contacts of the types of data they have stored on them when they first make contact or within 30 days, whichever is the sooner, by providing a link to their Privacy Statement and offering to send a copy to those who request it. We will comply with this guidance.

#### **Next steps**

Once we have established a legal basis for conducting major donor research, we will create a policy statement and guidelines for staff to ensure compliance with data protection laws, setting out how donor research should be collected and stored and what public information sources are appropriate and which are not. The aim of this guidance will be to ensure that Concern is only collecting and storing data that is necessary, that it is stored for only as long as necessary, that the information collected does not risk being regarded as intrusive and that staff are clear when and how donors and prospective donors need to be informed about the research we hold about them.

#### **Action requested of the Committee**

The Committee is asked to approve of Concern UK's Legitimate Interests Assessment (LIA)

## Concern Worldwide (UK) Legitimate Interest Assessment: major donor and major donor prospect research

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### Purpose of data processing

- Concern Worldwide UK (Concern UK) is an international NGO that specialises in tackling hunger and extreme poverty among some of the world's poorest communities. Concern UK is committed to fulfilling its obligations under all relevant data protection legislation including the General Data Protection Regulation (GDPR) and Privacy and Electronic Communication Regulation 2003 (PECR). Further information about how Concern UK processes our supporters' personal data can be found in our Privacy Statement ([www.concern.org.uk/privacy](http://www.concern.org.uk/privacy))
- Fundraising and marketing is a legitimate purpose for Concern UK. Donations from our supporters play a vital role in funding our work tackling extreme poverty and high value donations (defined as any donation worth £1000 or more) make an important contribution to Concern UK's total voluntary income.
- The purpose of major donor research is to collect and store information that enables us to understand better the interests, motivations and capacity to give of donors and prospective donors. This may include information provided by our donors and/or information that is in the public domain, available through the use of internet search engines such as Google and sites such as LinkedIn, Wikipedia, online newspapers and Companies House. Examples of the information collected include an individual's profession, philanthropic interests, previous charitable support, networks and financial capacity to give. We will need to minimize the information collected to information which would not be considered overly intrusive into the individual's private or personal life, not excessive to the purpose of this activity and ensure Concern UK is not collecting sensitive or special categories of personal data about individuals.
- Concern UK also accesses geodemographic segmentation analysis based on postcodes, using a product called ACORN. ACORN is not based on personal data specific to an individual, but rather on the principle that residents living in the same area are likely to share similar demographic, socio-economic and lifestyle characteristics. We use ACORN to identify major donors prospects, based on their postcode. This then needs to be confirmed through research into those specific individuals. This activity is known as profiling and requires special attention and transparency under data protection law.
- Understanding the interests and motivations of current and prospective high value individual donors, as well as their capacity to give, is fundamental to an effective and efficient major donor fundraising programme. Understanding our donors means that Concern UK is able to provide them with the most appropriate communications and funding proposals, both in terms of the types of programme and the size of donation we request. This also allows us to operate as efficiently as possible, for example avoiding making inappropriate communications and asks of donors that are unlikely to be successful.

### Necessity of data processing

Major donors make an important contribution to Concern UK's overall voluntary income and provide a very cost efficient form of income generation. Building relationships with major donors based on a detailed understanding of their interests and motivations and matching these to specific areas of Concern UK's work that

appeal to them is a vital component of an effective major donor programme, allowing us to approach donors and prospective high value individual donors with the most appropriate communications and funding proposals. Understanding an individual donor's capacity to give also enables us to make appropriate funding requests and avoid making inappropriate requests for support that are unlikely to be successful.

Stopping the process of conducting research into current and prospective high value individual donors would therefore have a highly detrimental impact on both the efficiency and effectiveness of our major donor programme and would result in reduced income. In addition, it would likely result in more donors receiving inappropriate funding requests, both in terms of programme subject matter and the size of donation requested, which could reflect badly on the charity.

We have considered whether there are alternative methods of gaining an understanding of the interests, motivations and capacity to give of our donors and prospective donors and concluded that there are not. In addition, we have taken into account that the geodemographic segmentation analysis and research we conduct will have the effect of reducing the amount of inappropriate and poorly targeted communications and proposals that we send major donors and major donor prospects and that we will conduct research into a relatively small number of carefully selected individuals.

#### **Balancing Concern UK's legitimate interests with the rights and reasonable expectations of our supporters**

In balancing Concern UK's legitimate interests in conducting donor research with the rights and reasonable expectations of our donors, we have considered the following:

- There is clear evidence that the UK public, and charity donors specifically, expect charities to manage their fundraising programmes as cost-effectively as possible. Matching funding requests to the interests and motivations of donors plays a key role in ensuring response rates are as high as possible and enables charities to avoid sending inappropriate funding requests that are less likely to be successful.
- In Concern UK's experience and as reported in sector-wide research, many high value donors expect charities to take steps to understand their interests and motivations before approaching them with a request for support. Not doing so would reflect poorly on Concern and is likely to damage our effectiveness in securing support for our work, as well as the charity's reputation.
- However, we also acknowledge that some donors and prospective donors may not be aware that Concern UK conducts this kind of research. Concern UK is committed to being as open and transparent as possible in communicating how we handle our supporters' data, including the research data we collect and hold on them and we achieve this principally through promotion of our Privacy Statement ([www.concern.org.uk/privacy](http://www.concern.org.uk/privacy)).

We have carried out a formal Data Protection Impact Assessment (DPIA) to evaluate the risks to the privacy of our donors and prospective donors associated with the research we do. This DPIA has informed this Legitimate Interests balancing exercise and will inform our High Value Donor Research policy, which will set out a number of measures that are designed to protect the rights of our donors and potential donors. This will include the following:

- We make clear through our Privacy Statement that we may carry out this type of research and provide an opportunity to object (*'We may sometimes use geo-demographic information to understand more about our supporters and your interests. We may also use publically available information to understand more about a small number of our donors or people that we believe may be interested in supporting our work. These legitimate activities enable us to tailor our fundraising and marketing activities to make them as appropriate as possible for our supporters and reflect their interests as closely as possible. If you prefer that we don't use your information in this way, we will respect your wishes. Please let us know by contacting us at [enquiries.info@concern.net](mailto:enquiries.info@concern.net).'*)
- If a donor contacts us to object to the collection and storage of research data, the information will be deleted as soon as possible, not later than 10 working days after the objection is received. (Note: some data will need to be retained for legal purposes, including financial records relating to a supporters' donation history, Gift Aid declarations etc.)
- We take active steps to make our supporters aware of our Privacy Statement. For example: information on how to access it is included in Concern UK's standard marketing contact permission disclosure statement, which all donors see when making a first donation to Concern UK; we include a statement on 'Protecting your Privacy' in every issue of our Individual Giving supporter newsletter and major donor newsletter, which includes information on how to obtain a copy of our privacy statement; we send an annual email to supporters for whom we have an email address drawing their attention to our privacy statement, with a link accessing it.
- We do not collect or store 'special categories of personal data' or 'sensitive personal data', as defined in the GDPR.
- We never share or sell any of the personal data we collect to organisations for their own marketing purposes.
- Where prospective donors have had no previous contact with Concern UK, we will inform them that we have conducted research on them at the first point of contact, or within 30 days of starting the research, whichever is sooner, by making them aware of our Privacy Statement and provide an opportunity to object and opt out of further communications. All current major donors have received, or were referred to, Concern UK's privacy statement and have the ability to object to profiling and we have the ability to remove any such profiling from current or future major donors.
- We comply with the GDPR principle of 'data minimisation' – we only collect and store research data that is necessary for our purpose of understanding the interests, motivations and capacity to give of donors and prospective donors. We will develop guidance for staff on what research data is relevant and what isn't.

- We do not store data unnecessarily. For example, for prospective donors who do not respond to our communications, we will delete the research data within two years of collection. (Keeping data for this period of time ensures we avoid re-contacting prospects unnecessarily.)
- We will create a policy and a set of guidelines to ensure Concern UK staff understand what types of research are permissible and how to respond if donors request that information about them should be deleted.

In conducting this balancing test we also note the following

- We will not collect or process the personal data of children (under 18s) in this pursuit and will never consciously profile children;
- The processing does not present high risk privacy effects or produce significant or legal effects for those individuals;
- We do not feel the processing activity will cause distress or harm to the individuals in question;
- The information collected will not be of such an extent that it may cause embarrassment to the individual (or organisation);
- We will continue to be able to act on all rights of data subjects under data protection law

Taking the above safeguards into account, we are satisfied that Concern UK's processes for collecting research information about our donors and prospective donors are fair, transparent and our legitimate interests in doing so are not overridden by the rights and reasonable expectations of our donors and prospective donors, which we believe are protected. However we recognise that the expectations of donors may vary depending on the type of research conducted and the closeness of relationship that the donor has with Concern UK and we have therefore considered each of these groups and research activities in more detail below.



Audience	Activity	Concern UK's legitimate interest	Do these individuals' fundamental rights override Concern UK's legitimate interest?	Conclusion
Existing Concern UK major donors	<p>Gather and store information that is publicly available or has been provided by the donor themselves.</p> <p>Use this research to better understand the individual's interests, motivations and capacity to give and tailor their communications accordingly.</p> <p>Ensure data is collected within defined parameters and nothing which would be considered particularly privacy intrusive</p>	<p>For Concern UK to achieve its charitable objectives, it needs to raise funds to support its work. To help us do this we need to maximise the value and frequency of donations made by our major donors.</p> <p>Research enables us to better understand our major donors and their specific interests, allowing us to approach them in a way which is most appropriate for them.</p> <p>It also allows us to consider what funding options we provide to the donor and tailor our communications accordingly. This in turn means that our fundraising is as effective and efficient as possible, improving the chance of successful funding requests and reducing the amount of activity that is less likely to be successful.</p> <p>We believe the above provides a legitimate interest for Concern UK to undertake research on this audience.</p>	<p>We believe that this audience would not consider this activity intrusive or outside their reasonable expectations. Donors of this kind are likely to expect us to take account of their interests in developing a relationship with the organisation, and use this to provide a better donor experience.</p> <p>We do not collect 'special categories of personal data' or 'sensitive' personal data.</p> <p>In cases where the research we conduct may not fall within the reasonable expectations of our supporters, we believe that the actions set up in the section 'Balancing Concern UK's legitimate interests with the rights and reasonable expectations of our supporters' provide adequate protection to the individual.</p> <p>In addition, we make donors aware that they can object to this type of data processing and that we will delete all research information about them if they do.</p>	<p>We believe that we have established a legitimate interest for this processing and that this legitimate interest is not overridden by the interests or fundamental rights and freedoms of the data subject, taking into account the measures we have put in place to protect those rights.</p>
Existing Concern UK supporters who are not currently	Classify existing supporter data using geodemographic segmentation in order to identify	For Concern UK to achieve its charitable objectives, it needs to raise funds to support its work. To help us do this we need to identify existing supporters who may have the capacity to give at a higher	We acknowledge that some donors may not be aware that Concern UK conducts this type of analysis. We address this by informing them through our Privacy statement, which we draw attention to on fundraising	We believe that we have established a legitimate interest for this processing and that this legitimate interest is not overridden by the interests or

<p>'major donors'.</p>	<p>potential high value donors</p>	<p>level, enabling us to focus resources and communicate appropriately and efficiently with these donors.</p> <p>Geodemographic segmentation analysis allows us to identify existing supporters who may have the giving capacity to give at higher levels, using their postcodes as an indicator of their likely demographics and lifestyle. This then needs to be validated through further targeted research about the individual from publically available sources and sources which the individual would not find privacy intrusive</p> <p>This geodemographic data is provided through a product called ACORN, which uses anonymised data gathered through public sources to provide information about postcode areas. This information includes; demographic, socio-economic and lifestyle characteristics of the general public living in those areas.</p> <p>Identifying major donor prospects is a crucial component of a successful major donor strategy and we therefore believe this provides a legitimate interest for Concern UK to undertake analysis of this kind.</p>	<p>communications and on the Concern UK website.</p> <p>We do not believe that donors would be likely to consider this research unacceptably intrusive. Donors expect charities to manage their fundraising as effectively and efficiently as possible, which includes targeting the right messaging to the right donors and prospective donors.</p> <p>Any donor who does not wish to be included in analysis of this kind is able to opt out.</p>	<p>fundamental rights and freedoms of the data subject, taking into account the measures we have put in place to protect those rights.</p>
<p>Existing Concern UK supporters</p>	<p>Gather individual research on Concern donors identified</p>	<p>For Concern UK to achieve its charitable objectives, it needs to raise funds to support its work. To help us do this we</p>	<p>We believe that some individuals would expect Concern to conduct research into its donors to improve the effectiveness of its</p>	<p>Taking the measures to protect the rights of individuals we have put in</p>

<p>who are not currently 'major donors'.</p>	<p>either through their donation and activity history or through the geodemographic segmentation analysis described above.</p> <p>Complete research using publicly available sources.</p> <p>Use this research to better understand the individual and tailor their communications accordingly.</p> <p>Ensure data is collected within defined parameters and nothing which would be considered particularly privacy intrusive</p>	<p>need to identify existing supporters who may have the capacity to give at a higher level, enabling us to focus resources and communicate appropriately and efficiently with these donors.</p> <p>Such prospective major donors may be identified as a result of their giving behaviour or as a result of the Geodemographic segmentation analysis described above. In both cases, individual research is required to ensure we are able to communicate appropriately and as effectively as possible with these donors.</p> <p>This process also limits the number of donors we approach with a funding request that is inappropriate for them (for example by asking for donations at too high levels) and allows us to tailor our communications thereby providing a better supporter experience.</p> <p>We believe the above provides a legitimate interest for Concern UK to undertake research on this audience.</p>	<p>communications. However, we also acknowledge that this activity might not be expected and could potentially be deemed intrusive by some individuals.</p> <p>We address this by informing our supporters of our approach to research through our Privacy Statement, which we pro-actively draw attention to on fundraising communications and on the Concern UK website. This also provides a right to object to such research being conducted.</p> <p>The research we conduct is used to improve targeting and tailoring of approaches and communications, which we believe benefits our donors by ensuring they receive the most appropriate communications and are not contacted unnecessarily or with inappropriate communications and donation asks.</p>	<p>place into account, we believe that we have established a legitimate interest this processing and that this legitimate interest is not overridden by the interests or fundamental rights and freedoms of the data subject.</p>
<p>Prospective supporters who have not previously engaged with Concern UK</p>	<p>Gather research on individuals identified through sources such as Trustee networks, media reports etc.</p>	<p>For Concern UK to achieve its charitable objectives, we need to raise funds to support its work. To help us do this we need to identify potential new supporters that may be interested in our work, provide them with appropriate</p>	<p>We believe that many major donor prospects would expect Concern to conduct research into their interests before contacting them, to improve the relevance and effectiveness of our communications. However, we also acknowledge that among</p>	<p>Taking the measures to protect the rights of individuals we have put in place into account, we believe that we have established a legitimate interest for this processing and</p>

	<p>Complete research using publicly available sources.</p> <p>Use this research to better understand the individual's interests and motivations and tailor their communications accordingly.</p> <p>Ensure data is collected within defined parameters and nothing which would be considered particularly privacy intrusive</p>	<p>communications and ultimately inspire them to support the charity.</p> <p>Research enables us to identify prospects who may have an interest in supporting our work and identify the types of programme they are particularly interested in. It also allows us to focus our effort and resources on individuals who are most likely to be responsive, helping ensure our fundraising is cost effective and an efficient use of charity resources.</p> <p>Research also helps us reduce the number of people we approach with a funding request that is inappropriate for them, and allows us to tailor our communications thereby providing a better supporter experience.</p> <p>We believe the above provides a legitimate interest for Concern UK to undertake research on this audience.</p>	<p>individuals with no prior engagement with Concern, this activity might not be expected and could potentially be deemed intrusive. Specific individuals will clearly not be aware that we are conducting research into them unless we inform them.</p> <p>To address this we will comply with GDPR Article 14 that requires organisations who are using information to communicate with individuals to inform them at the time of the first communication or within one month or starting the research, whichever comes sooner.</p> <p>Where we decide it is not appropriate to make an initial contact with a prospect, we will delete the research data within 2 weeks of that decision being made.</p>	<p>that this legitimate interest is not overridden by the interests or fundamental rights and freedoms of the data subject.</p>
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