Legitimate Interest Assessment – BACP forum (communities of practice)

Based on the ICO template

Part 1: Purpose test

You need to assess whether there is a legitimate interest behind the processing.

- Why do you want to process the data?

  - To encourage engagement between practitioners, ultimately to facilitate improvement in therapeutic practices.
  - To allow spaces for individuals to discuss therapeutic practices whilst maintaining freedom of speech (i.e. BACP will not moderate discussions unless there is a clear violation of the forum guidelines or terms and conditions).

  Update 18 Apr 23 (notifications on CoP): We want to allow individual users to 'tag' someone when commenting on CoP forums (i.e. the 'tagged' person receives an email to let them know about content aimed at them). We also want to inform users when a post they have submitted receives a response.

- What benefit do you expect to get from the processing?

  Improved engagement between members and BACP. The platform will provide a space where internal departments can engage with members directly on a particular subject matter or concern. This should lead to improved services and practices.

  Update 18 Apr 23 (notifications on CoP): this will help to drive effective engagement. This functionality has also been requested by the user group.

- Do any third parties benefit from the processing?

  Clients may benefit from improved therapeutic practices.

- Are there any wider public benefits to the processing?

  > Potentially a better counselling provision overall.
  >
  > Update 18 Apr 23 (notifications on CoP): no change to the assessment- see the comments above.

- How important are the benefits that you have identified?

  > The benefits are important to the relevance of BACP and in providing appropriate support to practitioners. Particularly practitioners that are working as individuals or in areas that are not well established.
  >
  > Update 18 Apr 23 (notifications on CoP): this is important to help make sure the CoP project is a success as it is a requested function and will help to drive effective engagement on the platform.

- What would the impact be if you couldn't go ahead with the processing?

  > The support mentioned above may not be in place and improvements to practice may not be realised.
  >
  > Update 18 Apr 23 (notifications on CoP): there is a risk the CoP project could fail if this functionality isn't included.

- Are you complying with any specific data protection rules that apply to your processing (e.g. profiling requirements, or e-privacy legislation)?

  > The ICO published some limited guidance in 2014[1]. The ICO had not produced any updated guidance at the time of this assessment – this was confirmed when calling the ICO. The 2014 guidance has been considered and mainly concerns the accuracy of data posted in forums.
  >
  > Update 18 Apr 23 (notifications on CoP): no additional update here. See above comments.

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[1] https://ico.org.uk/media/for-organisations/documents/1600/social-networking-and-online-forums-dpa-guidance.pdf

- Are you complying with other relevant laws?

Not applicable

- Are you complying with industry guidelines or codes of practice?

Not applicable

- Are there any other ethical issues with the processing?

As mentioned in the ICO's 2014 guidance, consideration is to be given to the accuracy of information if posted 'matter of fact' on forums – a process will be implemented to account for this.

Additional thought should go into forum rules and a code of conduct to outline what behaviour is acceptable and what will happen in the event that rules are broken.

Another consideration is the rights of individuals once they have posted content. There is a right for individuals to erase personal data about them. This will be enforced with regard to a user's profile but it is unlikely to be practical if an individual is mentioned within the content of a post. Article 17, paragraph 3a) states that the right to erasure will not apply to the extent that the processing is necessary for exercising the right of freedom of expression and information. It is felt, on balance, that this will be the case when individuals are mentioned within forum posts, as the flow of any conversation or the opinions attributed to specific individuals may be compromised.

Update 18 Apr 23 (notifications on CoP): Only users of the CoP system will receive notifications when they are 'tagged' or when someone responds to a post. Communications will be provided to users to let them know the functionality will be turned on and how to opt-out if they wish to. In addition, this functionality has been requested by the user group. This should not present any additional ethical issues.

Part 2: Necessity test

- Will this processing actually help you achieve your purpose?

> The forums will allow unregulated discussion between stakeholders
>
> Update 18 Apr 23 (notifications on CoP): yes, please see comments above regarding functionality and user group requests.

- Is the processing proportionate to that purpose?

> The processing is an established way of encouraging engagement between stakeholders. Individuals will also be made aware of the various rules and restrictions within privacy notices and terms of use.
>
> Update 18 Apr 23 (notifications on CoP): yes – as users will receive communication in advance of any change and will have the ability to opt-out.

- Can you achieve the same purpose without the processing?

> It is unlikely the purpose could be met in a more efficient way.
>
> Update 18 Apr 23 (notifications on CoP): No – this processing is required to achieve the functionality requested.

- Can you achieve the same purpose by processing less data, or by processing the data in another more obvious or less intrusive way?

> Consideration will be given to the personal data collected as part of a user's profile but it is unlikely that posts will be moderated to a great degree unless a forum rule is broken.
>
> Update 18 Apr 23 (notifications on CoP): No – this processing is required to achieve the functionality requested.

Part 3: Balancing test

Nature of the personal data

- Is it special category data or criminal offence data?

> Special category data and criminal offence data will not form part of the information gathered to create the user profile. Posts may contain information of this nature but will be moderated if they transgress forum rules. Data of this nature will not be processed by BACP without an appropriate legal basis – the decision to post this information will remain with the forum users and it will need to conform with the forum rules.
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. Please see above comments. The addition of this functionality is unlikely to change the content included on forums.

- Is it data which people are likely to consider particularly 'private'?

> There is a risk that data may be posted to the forum that an individual considers private. In this instance there should be a mechanism for the individual to object to the content.
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. Please see above comments. The addition of this functionality is unlikely to change the content included on forums.

- Are you processing children's data or data relating to other vulnerable people?

> Forum rules should include content that prohibits users from posting this kind of information. Users of the forum are likely to be in a profession that encourages confidentiality so they should be considered 'motivated defenders'.
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. Please see above comments. The addition of this functionality is unlikely to change the content included on forums.

- Is the data about people in their personal or professional capacity?

The information is likely to be anonymised or conceptual in nature if referring to methodologies. Opinions concerning individuals are more likely to be in relation to their professional capacity but there is a possibility that comments could relate to individuals in a personal capacity.

Update 18 Apr 23 (notifications on CoP): No update to this section. Please see above comments. The addition of this functionality is unlikely to change the content included on forums.

Reasonable expectations

- Do you have an existing relationship with the individual?

  Users gain access to the CoP platform through the existing BACP system (Learning Management System – LMS). Users agree to terms and conditions before being allowed access to the CoP platform.

  Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users.

- What's the nature of the relationship and how have you used data in the past?

  In the context of this assessment, the data has not been used in the past for anything other than standard forum needs.

  Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users.

- Did you collect the data directly from the individual? What did you tell them at the time?

  Profile data will be collected directly from individuals and a privacy notice will be provided to them beforehand.

> Posts are created by users who decide what information to include.
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users. Users will also be asked to agree to updated terms of service that will include information about the new functionality.

- If you obtained the data from a third party, what did they tell the individuals about reuse by third parties for other purposes and does this cover you?

> Data is unlikely to be obtained from third parties in relation to this assessment.
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users.

- How long ago did you collect the data? Are there any changes in technology or context since then that would affect expectations?

> Not applicable in the context of this assessment
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users and their data.

- Is your intended purpose and method widely understood?

> Forum terms, conditions of use and a privacy notice will be provided to users.
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users and their data.

- Are you intending to do anything new or innovative?

> No – standard technology and processes will be used.

> Update 18 Apr 23 (notifications on CoP): This is new functionality, please refer to the notes above and below.

- Do you have any evidence about expectations – eg from market research, focus groups or other forms of consultation?

> Forums are well established and have been used for a number of years. Users are likely to have used forums in the past.
>
> Update 18 Apr 23 (notifications on CoP): This functionality has been requested by the user group and will be communicated before being implemented.

- Are there any other factors in the particular circumstances that mean they would or would not expect the processing?

> Should BACP choose to use information for secondary purposes this may result in a situation where the processing is not expected (e.g. a positive comment about BACP is used for marketing purposes). This can be avoided through clear communication and appropriate controls.
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users or their data.

Likely impact

- What are the possible impacts of the processing on people?

> Individuals may be impacted by what other users have said or held responsible for views they have posted – it should be made clear in any terms of use that this is a risk of using the forum and users take this risk on when they choose to post something.
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users.

- Will individuals lose any control over the use of their personal data?

> Please see above comments (in answer to the question "Are there any other ethical issues with the processing?") with regard to personal data contained in posts.
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users.

- What is the likelihood and severity of any potential impact?

> This will depend on the content of specific posts but processes will be in place for individuals to challenge the accuracy of content posted. Forum rules and terms of use should help to mitigate this impact.
>
> Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users.

- Are some people likely to object to the processing or find it intrusive?

> It is felt this is unlikely as individuals choose to take part in a forum or not. However, please see the comments immediately above regarding accuracy of posts.

Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users.

- Would you be happy to explain the processing to individuals?

This will be done in an appropriate privacy notice.

Update 18 Apr 23 (notifications on CoP): No update to this section. See above comments. Communication will be sent to users before the change.

- Can you adopt any safeguards to minimise the impact?

Forum rules will be implemented and the forums will be moderated.

Update 18 Apr 23 (notifications on CoP): No update to this section. The addition of this functionality does not change the relationship with the users.

- Can you offer individuals an opt-out?

Individuals choose whether or not to use the forums. Individuals will retain the right to remove their profiles from a forum but there may still be content within individual posts that relate to those individuals.

Update 18 Apr 23 (notifications on CoP): Yes, an opt-out option will be provided in the user preference section of the CoP platform.

Can you offer individuals an opt-out?	See above notes

Making the decision

This is where you use your answers to Parts 1, 2 and 3 to decide whether or not you can apply the legitimate interests basis.

Can you rely on legitimate interests for this processing?	Yes

Individuals are provided with clear terms of use and may choose whether or not to use forums. There is a limited risk with regard to personal data being retained within specific posts when an individual withdraws from a forum; however, processes to help ensure accuracy of posts (In line with the ICO guidance – link on page 2 above) should help to mitigate this risk. Update 18 Apr 23 (notifications on CoP): Yes – relevant communications will be sent prior to any changes. The functionality is restricted to users of the platform. There is an option to opt-out and turn off the functionality. The implementation of the functionality will meet a request from the user group.	

LIA completed by	Data Protection Lead and Communities of Practice Lead
Date	6 Sep 21 Update 19 Apr 23 (notifications on CoP)