

Legitimate Interest Assessment

Based on the ICO template

Note: On 15 March 2021, the Ask Kathleen Service (AKS) changed its name to 'Get help with counselling concerns'. The objectives of the service did not change and this LIA is still relevant. Any reference within this document to the Ask Kathleen Service (AKS) can also be considered a reference to the 'Get help with counselling concerns' service.

Part 1: Purpose test

- Why do you want to process the data?

Data subjects contact the Ask Kathleen Service (AKS) to ask for support. Contact is initiated by the data subject. The service can be used anonymously, or individuals can provide their identifiable data if they wish.

This assessment does not apply to the anonymous data being collected. It applies to the situation where data subjects choose to provide identifiable data.

The service is carried out to provide effective support to individuals who require help regarding the therapy they have been receiving. Identifiable data is used to provide ongoing support effectively.

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

The benefit is better support to members of the public who feel they are not receiving adequate therapy. In some cases, clients feel they are being mistreated and the AKS will support those clients to ensure they are aware of the ethics and best practice in relation to their concerns – this may lead to formal complaints and, as a result, sanctions may be imposed against any practitioner who is considered to be acting inappropriately.

The high-level benefits are better protection of the public, protection of BACP's reputation and the reputation of counselling in general.

- Do any third parties benefit from the processing?

The public will benefit from improved therapy practice. In some cases, reduced malpractice, dishonesty, improper conduct or incompetence.

Clients will benefit - they should understand their rights better and what actions they can take to improve their situation.

- Are there any wider public benefits to the processing?

The public will benefit from improved therapy practice. In some cases, reduced malpractice, dishonesty, improper conduct or incompetence.

- How important are the benefits that you have identified?

BACP is an accredited body under the Professional Standards Authority. This authority sets standards for organisations holding registers for people in health and care occupations not regulated by law and accredits those organisations that meet their standards.

These standards are intended to ensure appropriate care is provided to individuals using the professionals listed on the relevant registers, so the benefits gained by supporting clients through the AKS are important.

These benefits are also important to protect public trust in BACP and therapy in general – i.e. so that individuals can be assured that therapy is safe, effective and worthwhile.

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

If the processing were not to be undertaken, it is possible BACP may not be able to meet the standards outlined by the PSA. Leading to potentially unsafe practice in the area of therapy.

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

Complying with the GDPR and DPA 2018.

- Are you complying with other relevant laws?

No specific additional laws are known to be particularly applicable at the time of writing.

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

Yes – the Standards set by the PSA for Accredited Registers.

- Are there any other ethical issues with the processing?

The information being shared is likely to relate to vulnerable individuals if they are concerned about therapy they are receiving. However, individuals are given the opportunity to use the service anonymously. A clear, full and transparent privacy notice will be presented to data subjects before they provide their personal data; this will help to mitigate any ethical issues.

Part 2: Necessity test

- Will this processing actually help you achieve your purpose?

Yes – where data subjects wish to receive ongoing support from the Ask Kathleen Service (AKS), there is a requirement to identify the individual and to have details about the support required.

- Is the processing proportionate to that purpose?

Yes – the AKS team only collect the data needed to provide the service. This is enough data to identify the individual and provide ongoing support.

- Can you achieve the same purpose without the processing?

Unlikely as the processing is required to ensure the purposes can be met. No known alternatives at the time of writing. The purpose requires personal data to be processed so specific individuals can be provided with the support needed for their individual situations

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

Unlikely – the sharing is required to ensure the purposes can be met. In addition, consideration has been given to data minimisation and restriction of secondary uses. No known alternatives at the time of writing.

A unique reference number was considered (e.g. the caller being provided with a unique reference number that they can use each time they call the service) – this was rejected as users of the service may not remember their unique reference number, leading to a reduced level of ongoing support.

Part 3: Balancing test

Nature of the personal data

- Is it special category data or criminal offence data?

The data is likely to be related to mental health. The amount of data collected is minimised. Legitimate interest will be used as the legal basis for personal data. Where special category data is processed it will be processed under the legal basis of defending against potential legal claims – this is to allow BACP to defend itself should someone complain about the guidance provided by the Ask Kathleen Service.

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

The data being retained has been minimised but the entry of a name onto the Ask Kathleen Service (AKS) logs is effectively showing that the individual is receiving therapy. Individuals may consider this as 'particularly private'. This is unavoidable if ongoing support is required.

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

The data being retained by the AKS is minimal and unlikely to refer to identifiable third parties. However, clients of therapists are likely to be vulnerable to some extent.

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

The data is likely to be about people in their personal capacity.

Reasonable expectations

- Do you have an existing relationship with the individual?

Whilst the data subjects are unlikely to be known by BACP on initial contact. The data subjects themselves initiate contact with BACP and choose to use the service.

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

Previous relationships are only likely where the data subject has used the AKS previously. In this case, BACP would keep a record of the interaction and would use it to provide ongoing support to the data subject if needed. The information would also be held to defend against legal claims if needed.

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

The data is collected directly from the individual. A privacy notice will be provided to the individuals before they provide any personal data.

- 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?

This should not be an issue in this case. Any calls to the AKS about third parties are taken anonymously – identifiable information about third parties is not captured.

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

Data is likely to be collected within appropriate timescales due to the nature of the AKS – data is collected after the data subject initiates contact. The data is deleted in line with the retention policy.

- Is your intended purpose and method widely understood?

The data subjects initiate the contact and should have an understanding of what the service entails as they are presented with a privacy notice before data is collected.

- Are you intending to do anything new or innovative?

No, standard technology and processes are being used to process the data.

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

There is historic data that suggests individuals may call up to 5/6 times in relation to the same query. There have also been instances where individuals have asked for copies of guidance that have been provided in the past (up to 6 months in current examples but likely to be up to 12 months as users of the AKS are more likely to submit a complaint about their therapist to BACP – this triggers a 12 month period for retention).

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

The data subjects initiate the contact and should have an understanding of what the service entails as they are presented with a privacy notice before data is collected.

Likely impact

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

The possible impacts are likely to be minimal given that data subjects initiate contact with the service and are requesting help. There is a possibility that data subjects may not wish data to be retained beyond the initial point of contact, but they have the option to use the service anonymously.

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

Individuals may lose control with regard to some of their rights (including the right to erasure) as BACP will need to retain copies in case of potential legal challenges. This is proportionate as BACP has a right to defend itself against any claims of improper practice or negligence.

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

An appropriate privacy notice will help data subjects to understand any potential impact before they supply any personal data. They also have the ability to use the service anonymously.

Potential impact is unlikely as minimal data is processed and it is retained securely with restricted access. The data retained may reveal that an individual has received therapy and experienced difficulties with the service they received but the information would have to be combined with other datasets to provide certain identification.

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

We think this is unlikely as individuals have the option to use the service anonymously.

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

The processing should already be explained to individuals as they will be provided with a privacy notice prior to using the service.

- Can you adopt any safeguards to minimise the impact?

Safeguards have been implemented in the guise of data minimisation and purpose limitation. Data usage is controlled through appropriate policies/procedures. A DPIA has been conducted and safeguards implemented as a result.

- Can you offer individuals an opt-out?

Opt-out is not an option once data has been provided as BACP will retain the information to defence against potential legal claims. However, the service can be used anonymously.

Making the decision

Can you rely on legitimate interests for this processing?	Yes
<p>Can you rely on legitimate interests for this processing?</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p>On balance we believe we can rely on legitimate interests in order to help protect the public and meet the standards required by the PSA, provided an appropriate privacy notice is presented to data subjects prior to data collection.</p> </div> <p>Do you have any comments to justify your answer? (optional)</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p>Legitimate interests will be relied upon when collecting personal data only. The basis of defending against legal claims – GDPR Article 9(f) will be used for special category data, considering the ICO guidance relating to potential future claims¹, we feel it is necessary to keep an accurate record of the guidance provided by the AKS.</p> </div>	
LIA completed by	Data Protection Lead / Public Ethics Manager / Administration Manager (Register)
Date	Oct 2020

¹ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/special-category-data/what-are-the-conditions-for-processing/#conditions6>