

Care and Health Improvement Programme (CHIP) Markets and Modelling Project

Statement for Councils on Information Governance, Data Protection and Freedom of Information requests.

PHASE ONE - MARKET ANALYSIS

1. BACKGROUND INFORMATION ABOUT THE PROJECT

The aim of the Markets and Modelling Project is to help council commissioners understand and shape their adult social care markets by collecting data and building online tools which enable analysis and modelling of markets. Once the tools are built we will offer support to commissioners to use these tools to assist in their planning.

- Several ADASS regions have previously commissioned work with the aim of better understanding their care markets in regions and sub-regions.
- The project builds on this ADASS regional work to develop and test a national model. We will develop a core baseline national dataset of adult social care markets to an agreed format across ADASS regions, which can be used by regions and councils to understand, analyse and model future markets at local, regional and national levels.
- The Care and Health Improvement Programme (CHIP) has entered into a contract with Alder Advice to undertake Phase 1 of the Project and they have engaged with all regions and a national Reference Group in the preparatory stage during autumn 2018. A flexible approach to engagement and co-design between the supplier, CHIP and the regions has been key to the development of the project.
- ADASS Sector-led Improvement leads, ADASS regional chairs, the ADASS National Commissioning Group, CHIP Care and Health Improvement Advisors (CHIAs) and the project Reference Group have been regularly briefed and helped develop the project.
- The feedback from all groups has been incorporated into a data set collection template – this is the Market Analysis Data Request Template with Definitions and Guidance - [link here](#)

Next steps - the Market Analysis Data Collection

Councils are requested to complete and submit the dataset to Alder Advice between **Friday 1st February and Friday March 8th 2019** if they wish to participate in this project.

Additional background information on the project is available in the [MM Project Information Briefing and FAQ Jan 18](#). This sets out details about the project aims, the organisations involved and the relationship between them.

Please email Alder Advice if you have any questions about the market analysis work at Ideamarketa@alderadvice.co.uk

For the predictive modelling work email them at Ideamodelt@alderadvice.co.uk

To contact CHIP about this project please email marketsandcommissioning@local.gov.uk

2. INFORMATION GOVERNANCE

During the engagement phase of the Markets and Modelling project colleagues in councils have emphasised the importance of ensuring that information is protected and information governance issues are carefully considered and addressed. This document sets out our approach to information governance and data protection.

This statement covers:

- Information Governance oversight arrangements for the Project
- Data protection: approach to compliance, secure transfer, storage and use of information.
- Data Sharing Agreement - [link here](#) - between the IDeA and participating councils
- LGA approach to Freedom of Information.

NB In order to participate councils will need to sign a Data Sharing Agreement with IDeA, the LGA company that runs the Care and Health Improvement Programme (CHIP) with ADASS.

The Data Request Template will ask the councils returning the data to confirm it has returned a signed and dated Data Sharing Agreement between it and IDeA to Alder Advice. The auto validation routine will halt data processing if this confirmation is not given in the required data field.

Definitions:

Data Protection Law means the Data Protection Act 2018, the General Data Protection Regulation (EU2016/679) and all other laws, directives, regulations and codes of practice applicable to Personal Data.

Personal Data, Data Controller and Data Processor have the meaning given to them in Data Protection Law.

The LGA policies which apply to this project can all be found [here](#) on the LGA website. The policies are

- LGA Data Protection policy
- LGA Freedom of Information policy
- LGA Privacy policy

Relevant Alder Advice policies can be found [here](#) on the Alder Advice website. See the Alder Advice Information Governance and Confidentiality Policy.

3. INFORMATION GOVERNANCE OVERSIGHT ARRANGEMENTS

The Markets and Modelling project is governed by a Steering Group made up of members of the CHIP team, regional and national ADASS representatives. A Reference Group has also been set up with membership drawn from ADASS subject specialist and regional council representatives to advise the Steering Group and work with the contractors on the project. The Steering Group and the Reference Group will not have access to any data that is transferred to the LGA other than via the tool developed by the LGA.

LGA is acting under the instructions of the Steering Group in implementing this Project. It also provides updates to and seeks advice from the ADASS commissioning network and ADASS regional chairs group.

The IDeA, on behalf of the Steering Group and CHIP, has signed a contract with Alder Advice covering all aspects of Information Governance and Data Protection. As part of the contract monitoring we will be monitoring Alder Advice's implementation of their information governance policies.

The LGA Information Governance Group are the governance group within the LGA that have oversight of information governance, security, management and quality. They scrutinise the LGA's compliance with its policies and procedures that are in place to maintain and protect the security and integrity of information.

To further reassure councils we have asked this group to -

- 1 Provide oversight and scrutiny of Markets and Modelling Project Steering Group management of information risk and governance in relation to the markets and modelling project to assist the Steering Group to:
- 2 Articulate any information or personal data risks and to include these on the information governance risk register.
- 3 Review the measures proposed to mitigate any risks in accordance with the LGA's policies and procedures
- 4 Take any appropriate action required in relation to information governance or associated risks
- 5 Provide a point for advice and referral for CHIP in relation to this project about the resolution and/or discussion of Information Governance issues
- 6 Seek legal advice from the LGA Legal team as necessary

4. IS THE INFORMATION REQUESTED PERSONAL DATA?

Our understanding is that the data provided by local authorities for use in the Project is "personal data". Personal data see art. 4(1) General Data Protection Regulation (EU2016/679):

"any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as .. an identification number"

Our understanding is that Individual data subjects will not be identifiable by Alder Advice or by IDeA, because they are to be identified by a reference number rather than by name. However, it is our view that the fact that the providing councils have the means of identifying the individuals concerned is sufficient for the data to be classified as personal data for the purposes of Data Protection Law. This is because the data councils will be sharing will be “pseudonymised” rather than truly anonymised.

5. SPECIAL CATEGORY

Further it is our understanding that the data local authorities will be sharing is personal data within “the special categories” because it relates, in part, to the health of individual data subjects, and processing of that data must therefore comply with additional conditions.

We understand that processing in this case can fairly be said to be “necessary for the purposes of the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law.” As the Project is intended to assist local authorities to comply with their Care Act obligations to analyse and better understand the operation of the care market in their areas, it is our view that this is part of the management of social care systems and services, notwithstanding that services in this instance are overwhelmingly provided by third parties rather than by councils.

6. DATA CONTROLLER AND PROCESSOR ROLES

In relation to the Project data:

- (1) Councils and IDeA will be the data controllers
- (2) Alder Advice will be the data processor

IDeA has determined the scope and activities of the Project and procured a contract with Alder which sets out what Alder is expected to do with the data.

Our understanding is that this division of responsibility means that IDeA has responsibility to “implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with data protection law.” Such measures include putting various stipulations and safeguards in the contract with Alder Advice.

7. CONTRACT

Independent legal counsel have reviewed the current wording of the contract between the IDeA and Alder Advice and are satisfied it meets the requirements of data protection legislation. Care has been taken to include suitable contractual terms governing Alder Advice’s data processing activities.

8. DATA RETENTION

The contract between Alder Advice and IDeA includes an obligation upon Alder Advice to comply with any instruction by IDeA to transfer or destroy the data upon termination of the contract in accordance with the requirements of data protection law. Alder Advice will not retain information provided to it by local authorities once it has completed its contractual tasks in relation to that data, and provided aggregated spreadsheets back to each participating council and to IDeA.

IDeA will keep the data for the length of the project in order to provide the data needed for the operation of the market analysis tool; the purpose for which the information is being collected.

9. LEGAL JUSTIFICATION FOR THE DATA COLLECTION EXERCISE

For the purposes of this Project, the legal justification we rely on for the collection of data is that:

“processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”.

Legal counsel have confirmed that IDeA can satisfy Data Protection law requirements. The task for which data processing is necessary in this case is a task carried out in the public interest of enabling local authorities better to plan and coordinate their social care provision. Local authorities have a duty under [s. 5 of the Care Act 2014](#) to promote the efficient and effective operation of the market in care services, which involves, amongst other things, collecting and analysing information about demand for services and the availability and sustainability of providers of those services. The Project is designed to help authorities with that important task. Further, IDeA has a unique statutory status as a body which provides services to local authorities and is entitled to receive money from central Government to that end. The statutory provisions are sufficient to confer “official authority” upon IDeA within the meaning of data protection law.

10. DUTY OF CONFIDENTIALITY

There are additional conditions and safeguards applicable to this type of data processing set out in data protection legislation. These are that “data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies”.

Our understanding is that a professional in this context does not have to be a health professional. Section 11 of the Data Protection Act 2018 makes clear that the professional with responsibility for social care-related processing may be a health professional, a social work professional or “another person who in the circumstances owes a duty of confidentiality under an enactment or rule of law”. The duty of

confidentiality can be imposed by contract. It is our understanding that Data Protection laws can be complied with by virtue of the individual within IDeA who has responsibility for the Project being under standard contractual obligations of (a) confidentiality and (b) compliance with IDeA's data protection obligations. The Markets and Modelling Project Steering Group will have oversight of the Project. This will consist of individuals who will also have standard contractual obligations relating to confidentiality and data security.

11.NECESSITY

Our understanding is that having established that the data processing which is necessary for the purposes of the Project is in principle permissible under the data protection legislation it must also be asked whether the particular form of processing which is intended is "necessary" to achieve the relevant purposes. This involves, in particular, consideration of whether suitable steps are taken so far as possible to minimise the processing of data to that which is strictly necessary and to anonymise data which is to be disclosed to third parties.

We understand that this obligation will be satisfied by IDeA in this case. The key point is that the outputs of the market analysis tool created by IDeA will be managed so as possible to suppress any personally identifiable data when data is provided to local authorities who access the tool. This will be done, in the first instance, by disclosing only data which is aggregated across all participating authorities, across geographical regions and/or is referable to particular providers. No names of individuals will be disclosed and authorities other than the authority which has responsibility for a particular individual will not have any obvious means of identifying that individual from the information provided. Data held by IDeA within the market analysis tool will be subject to suitable data protection safeguards.

12.FAIR PROCESSING OBLIGATIONS

We understand that IDeA will not have to comply with the fair processing obligations under the Data Protection legislation because provision of this information would involve "disproportionate effort" given the "statistical purposes" of the processing in question. The IDeA will however, publicise details of the Project and the data processing involved on the CHIP website.

13.ASSURANCE FOR COUNCILS

IDeA is advised that it can provide assurances to councils that the Project is compliant with relevant data protection law. It will be up to each individual council to satisfy itself that its disclosure of data for the purposes of the Project would be compatible with the purposes for which the relevant data was obtained. When doing this councils may want to consider the performance of the authority's Care Act duties as our understanding is that they would usually fall within those purposes and participating in the Project can fairly be said to further the performance of the market analysis duties referred to above.

14. WHAT INFORMATION WE ARE REQUESTING?

The information being requested from councils can be found in Market Analysis Data Request Template with Definitions and Guidance - [link here](#)

15. INFORMATION QUALITY

Information transferred from Councils to Alder Advice will need to meet each Council's standard quality requirements and validation criteria. Any discrepancies identified by Alder Advice will be checked back with the council for data validation and quality checking purposes and a cleaned up version of the data will be returned to each council.

Alder Advice will comply with the LGA definition of data quality as follows -

Good data quality can be defined as having data with the following attributes:

- **Accuracy** - Data should be accurate, with the right level of details and created and managed in a way that fosters the capturing of good levels of accuracy.
- **Validity** - Data must comply with requirements and rules under which it will be used and captured accordingly.
- **Reliability** - Consistency and reliability in data quality is critical and data must be collected within defined processes and time scales to ensure that all data is reliable.
- **Timeliness** - The collection of data must be timely and as close to the creation of the information as possible to reduce chances of inaccuracies.
- **Relevance** - Data must be relevant for the purposes for which it is being collected. The requirements and uses of the data must be documented and agreed so the right data is collected. Data collected must be proportionate for the use to which it will be put.
- **Completeness** - Data should be complete for the purposes with no redundant or incomplete fields which may have a bearing on data quality.

SECURE TRANSFER AND STORAGE OF DATA

Transfer of information will be by secure email via the Egress System which will encrypt the transfer both from councils to Alder Advice and from Alder to the LGA/IDeA.

Passwords will be sent separately from data.

Information being transferred to the LGA/IDeA must be labelled or marked to indicate the restrictions on use.

Alder Advice will be using Egress Switch which they consider meets the requirements of data protection laws to receive emails from councils and to transfer data to Egress

Switch software is widely used in social care departments within local government for encrypting emails sent to external organisations and partners (such as the NHS, providers, families etc.) It is ISO 270001 compliant.

The website page <https://www.egress.com/case-studies> gives an indication of some of the organisations that have highly sensitive personal data that have integrated Egress into their Office 365 and/or Microsoft Outlook infrastructure e.g. these include CAFcASS. It can also be accessed via a secure, encrypted website. It confirms that Egress:

- Meets legislative and industry compliance requirements, including the data protection laws, and
- Uses data centres accredited to ISO 27001 / 9001.

Once transferred to Alder Advice the data will be held on Alder Advice advisers' laptops. The laptops are password protected and are stored securely at each advisers' home when not in use. Only the individual advisers have access to data on the laptops.

All laptops and desktops being used by the Alder Advice team to access/store any data related to this project are secure. For example, all laptops/desktops are:

- Password protected in the usual way and have up to date malware and anti-virus software.
- Stored securely when not in use and laptop are not left in cars overnight as a matter of policy.
- Protected by "Microsoft Bitlocker". This is a widely used full disk encryption system for Windows 10 devices. Many local councils, for example, routinely use Bitlocker for encrypting laptops used by staff. Without the encryption password (separate to the windows log in password) any data held on a device cannot be accessed if that device was lost, stolen or decommissioned. See <https://docs.microsoft.com/en-us/windows/security/information-protection/bitlocker/bitlocker-overview> for more information about Bitlocker.

Paper records and portable storage devices will be kept secure when not actively used. This includes secure transit. Records will not be left unattended on desks or printers.

Alder Advice will store the information transferred on a shared storage within Microsoft Azure. Access to the shared storage is restricted through authentication (provided by Microsoft Azure) and access is allowed only for designated members in Alder Advice. <https://azure.microsoft.com/en-gb/overview/security/>

Downloaded data files are processed in a standalone server within Microsoft Azure data centres located in Northern Europe. Access to the server via RDP (Remote Desktop Protocol) through authentication (provided by Microsoft Azure) and

access is allowed only for designated members in Alder Advice. A limited number of staff (Dan Short and Dan Fisher) at Alder Advice will access the information.

Processed data is stored in a Microsoft SQL Server relational database and access to the data will be restricted further by using SQL Server authentication.

The LGA/IDeA will store the data transferred to LGA from Alder Advice in the secure research area of the LGA network which can only be accessed by LGA/IDeA research staff and of the trusted third party LG Inform software developer. The data transferred will be excel spreadsheets of data processed by Alder Advice from the templates returned to Alder Advice by councils.

Once the information is transferred by secure methods using EGRESS to the LGA, the LGA will not produce publically available league tables comparing authorities.

RETENTION

Data will only be held by Alder Advice for the duration of and for use on this specific project and for a short specified period up to and just after the final report is provided by Alder Advice. This provision is in place in case any data errors or analysis errors emerge immediately after the report is presented and need to be corrected.

The data held by Alder Advice will be for the duration of the contract only and only used to improve commissioning and market oversight in relation to support for older people and for adults with learning disabilities in the councils and regions participating in the project.

The data will be destroyed by Alder Advice after transfer before the final payment is made to Alder Advice. Alder Advice are required to inform the LGA in writing when the information is destroyed.

DATA BREACH PROTOCOL

Alder Advice will comply with the LGA's Data Breach Protocol.

IDEA/LGA AND FREEDOM OF INFORMATION

The IDEA and LGA are not listed in the Freedom of Information Act 2000 (the Act) as public authorities and so are not currently required to comply with the obligations under the Act and the Environmental Information Regulations 2004. However as part of their commitment to the principles of openness, transparency and accountability, the LGA's policy is to respond to requests for information, broadly within the spirit of the Act.

If a FOI request is received for information relating to this project the LGA will aim to comply with its policy.

The LGA Freedom of Information policy can be found here.

<https://www.local.gov.uk/about/who-we-are-and-what-we-do/freedom-information>

APPENDIX ONE - Alder Advice and LGA policies
LGA policies apply to IDEA

- [LGA data protection policy](#)
- [LGA Freedom of Information policy](#)
- [LGA privacy policy](#)
- [Alder Advice Information Governance and Confidentiality Policy](#)