



## **RESPONSE TO EDPB DRAFT GUIDELINES ON PROCESSING PERSONAL DATA IN THE CONTEXT OF CONNECTED VEHICLES AND MOBILITY RELATED APPLICATIONS**

### **About the ABI**

The Association of British Insurers is the voice of the UK's world-leading insurance and long-term savings industry. A productive, inclusive and thriving sector, our industry is helping Britain thrive with a balanced and innovative economy, employing over 300,000 individuals in high-skilled lifelong careers, two-thirds of which are outside of London.

The UK insurance industry manages investments of over £1.7 trillion, pays nearly £12bn in taxes to the Government and powers growth across the UK by enabling trade, risk-taking, investment and innovation. We are also a global success story, the largest in Europe and the fourth largest in the world. Founded in 1985, the ABI represents over 200 member companies providing peace of mind to households and businesses across the UK, including most household names and specialist providers.

### **Introduction**

1. We welcome the opportunity to provide feedback on the European Data Protection Board's Guidelines 1/2020 on processing personal data in the context of connected vehicles and mobility related applications. Connected vehicles, and connectivity in the context of mobility more broadly, have the potential to radically transform the way we move and deliver significant societal benefits. Insurers are at the forefront of many developments in this area and innovations such as telematics and digitalisation have already brought rapid changes.
2. In-vehicle telematics has been installed in an increasing number of vehicles over recent years. In the UK, the number of telematics policies available has doubled between 2016 and 2019 and the number of policies issued to motorists is estimated above 1 million.
3. Telematics enables insurers to assess driving performance and reward safer drivers. It is a valuable tool in helping to settle insurance disputes and claims and can help improve the way people drive – offering an invaluable benefit to society.
4. In the UK, telematics has played an important role in providing affordable insurance for younger drivers. While there are a large number of different rating factors used in setting the price for motor insurance, average premiums for motorists are closely linked to the average claim for all ages. Young drivers are statistically significantly more likely to be involved in accidents than drivers aged 25 and older. Their increased accident frequency and severity is reflected in the average premium for that age group. Telematics can play an important role in helping these high-risk, high-premium segments to understand and manage their risk and therefore the cost of insurance.
5. Whilst we wholeheartedly support necessary measures to protect individuals' privacy and safeguard their personal data, these need to be carefully considered in the context of potentially detrimental unintended consequences that could harm other forces for good, including competition, access to affordable insurance, and fraud and crime prevention.

6. We are concerned that the draft guidelines may severely limit the benefits offered by telematics to the detriment of users who can help control the cost of insurance through careful driving habits, as well as the safety of other road users, pedestrians and wider society. We therefore urge the EDPB to consider a number of points in more detail. Our key concerns are highlighted below.

### **General observations**

7. The use of telematics-based insurance is a unique example and there is a need to consider these recommendations in the context of other insurance products which collect, use, and rely on the data provided by connected vehicles and telematics devices.
8. In general, we believe that the guidelines could be clearer on the realistic implications on the telematics market and consumers, data collection in the event of claims, the requirement for data access in terms of the legal basis on which insurers can collect data for underwriting purpose and during claims investigation, and in the context of automation and Advanced Driving Assistance Systems (ADAS) functionality.
9. Another main area of concern is around the seemingly optional engagement from the policyholder. The draft guidelines could be interpreted as saying that the customer has the option to submit vehicle-related data, whereas this is currently a requirement of contracts for telematics insurance products, and any withholding of data or tampering with equipment could result in cancellation.
10. Insurers only collect the minimum data that is collected and shared in a controlled and secure way to the insurer from the telematics box or application for specific purposes. Customers currently have the right to submit a subject access request and insurers will stop collecting data when the customer cancels their policy. There may be exceptional circumstances where the data storage period may need to be extended to enable insurers to fulfil their regulatory and statutory obligations and to allow them to respond to any concerns that may be raised in the future in relation to the cover provided or how an insurer dealt with a claim or complaint. Any data protection guidelines will need to take these requirements into account.
11. In para 103, the EDPB notes that insurers require customers to install a built-in telematics service. Whilst many telematics policies are based on a physical 'black box' being installed in the vehicle, many policies use smartphone apps and other solutions (e.g. directly through connected vehicles) may become available in the future.

### **Legal basis**

12. We believe that there is insufficient recognition of the legal basis for processing data and the proposed guidelines could cause problems, particularly when using telematics devices which may be fitted by the vehicle manufacturer.
13. Overall, we seek a stronger appreciation of the fact that telematics insurance policies cannot exist without the data collected by connected devices. To this end, we seek that the guidelines clearly articulate a legal framework that not only protects the privacy of the data subject but also enables such policies to continue to operate efficiently and effectively, to the benefit of

both policyholders and wider society. The collection of usage data is a precondition of the contract to which the customer is agreeing to when they take up cover. Where the individual prevents insurers from collecting data from the telematics device which is used for underwriting, pricing and fraud prevention this will mean that insurers will not be able to perform their contract of insurance.

14. We would also note that data needs to be held to perform the contract even after the expiry of the contract in order to deal with, for example, claims or complaints that may arise subsequently.
15. The EDPB's interpretation of personal data in para 3 in the context of connected vehicles goes beyond the GDPR definition of personal data. For example, data relating to the wear and tear of vehicle parts is purely technical data and, unless linked to an identifier (e.g. VIN), does not reveal any information on a particular data subject.
16. Para 46 notes that consent should be separately obtained from all drivers/users to use their data. When processing data, it is unlikely the insurer will be able to identify that a third party is driving the car for any particular journey unless they are told, for example as a result of a claim. There are potential difficulties in obtaining consent as there is usually no direct contact with a named/occasional driver and the insurer. Generally, insurers will only know that data relates to the vehicle which is directly linked to the policyholder who has entered into the insurance contract. As the EDPB acknowledges in para 49, such consent might be difficult to obtain in practice from drivers and passengers who are not related to the vehicle owner. The guidelines should stress that other legal bases under Art. 6 GDPR can be considered as an alternative to consent, and we seek further guidelines on this that take into account the way drivers may provide lifts for others and share journeys and vehicles in practice.
17. The EDPB's view is that connected vehicles and related devices shall be considered as a 'terminal equipment' and that provisions of Art. 5(3) of the ePrivacy Directive therefore apply. In this context, we point out that Art. 5(3) of the ePrivacy Directive states that the legal basis for insurers to collect data from a connected vehicle is consent and this Directive takes precedent over Art. 6 GDPR (i.e. performance of contract for telematics insurers). However, use of consent as a legal basis for providing telematics insurance under Art. 5(3) of the ePrivacy Directive conflicts with Art. 6(1) GDPR which states that consent should only be used where no other legal bases apply so that once the initial choice has been made it is impossible to swap to a different legal basis.
18. Paras 105–106 of the Guidelines provide that Art. 6.1(b) can be relied on as the legal basis for *processing* of data which is *necessary* for the provision of the telematics insurance contract. It also appears to require an additional consent under Art. 5(3) ePrivacy Directive to access the data from the end-user's terminal equipment/electronic communication network. Our understanding therefore is that there is a requirement for ePrivacy consent in addition to the GDPR legal basis under Art. 6.1(b) in relation to telematics insurance products. We believe the Guidelines could be clearer on this point.
19. For collection of data from the connected vehicle which is over and above that which is strictly necessary for the telematics insurance contract (for example data collected for analytical purposes to build insurance pricing algorithms or for fraud prevention purposes), we believe

Art. 6.1(b) is unlikely to be available and another legal basis would therefore be required. This is not addressed in the guidelines. Instead, the guidelines suggest such further data should not be obtained by insurers. The guidelines should acknowledge that data can be processed where a legal basis under GDPR exists, and subject to any necessary ePrivacy consent being obtained.

20. Para 106 of the guidelines seems to assume that in order to rely on Art. 6.1(b), the insurer will ultimately always enter into a contract with the data subject. Clarity is needed where data is used, for example to provide an insurance renewal quote but a contract is not ultimately taken up. We believe Art. 6.1(b) should still be available on the basis this is done 'in order to take steps at the request of the data subject prior to entering into a contract'.

### **Geolocation data**

21. As currently drafted, the EDPB's draft guidelines on geolocation data are fundamentally incompatible with an insurance-based telematics contract and would severely hamper the ability of insurers to provide telematics products. We strongly urge the EDPB to reconsider its approach. Whilst we recognise that geolocation data should be treated with additional care, with consent sought to access it where appropriate, it is an absolute requirement for usage-based insurance for a number of reasons, including:

- To validate speed vs speed limits on specific road segments: this is a key component of risk assessment and without it, insurers' pricing models for usage-based insurance are severely weakened.
- To provide customer feedback: this is key to improving driving behaviour. Being able to demonstrate specific events at specific times and locations (e.g. road name/number) enables customers to better understand their driving behaviour and how they can improve their own safety.
- To calculate an accurate and fair price that reflects good driving behaviour.
- To validate and investigate claims. Geolocation data allows claims handlers to achieve better claims outcomes by providing environmental context to the verbal description of events. Often, this can help build an accurate picture of the events leading to an accident and therefore improve decision-making, for example in terms of determining liability.
- To detect and prevent fraud and criminal activity. Geolocation data can be used to detect fraud and criminal activity. For example, where a false address is given in order to reduce premiums, locational data can be used to prove the 'kept address' is in fact false and therefore fraudulent. It also enables a range of functions to support customers, including theft tracking services.
- To detect accidents. Future propositions may include accident detection and response. Geolocation data will be required to identify where the vehicle is, in order for the insurer to respond.

22. Free and constant monitoring of geolocation data is an essential feature of telematics. The option to opt out of the collection or processing of geolocation data, or the requirement for distinct consent (rather than agreement at inception of the contract) gives customers the option to 'change their mind' whenever they may drive outside of the policy conditions. This undermines the fundamental purpose of telematics-based insurance policies.
23. The EDPB's draft guidelines risk harming a growing, innovative segment of the motor insurance sector that can help provide fairer prices to large segments of the driving population. The EDPB's draft guidelines also risk harming insurers' efforts to mitigate the societal and economic harm caused by criminals.
24. We urge the EDPB to reconsider the principles outlined in para 61 of the draft guidelines and ensure that they are compatible with the provision of telematics insurance. We believe that geolocation data, where a requisite part of the telematics proposition, should be covered under the Article 6.1(b) legal basis and using the UK Data Protection Act 2018 insurance derogation where the data could amount to special category data.

#### **Data protection by design and by default**

25. We have the following comments on the recommendations in paragraph 74:
26. **Only data strictly necessary for the vehicle functioning are processed by default and data subjects should be able to activate/deactivate the data processing for each other purpose.** This assumes that telematics products will only use data items strictly necessary for the vehicle functioning in the pricing of a telematics product. Telematics insurance may use data items that do not solely relate to the functioning of the vehicle such as time of day, location (as discussed above) and seat belt usage as these factors can be indicative of insurance risk. If new telematics propositions are developed which use other data elements because analytics show they are significant indicators of risk, these would become product critical and as such the product could no longer be provided if those elements were deactivated by the data subject. We would suggest instead that only data *necessary for the telematics contract* should be used by default and that data subject would have control over wider data elements as appropriate.
27. **Data should not be transmitted to third parties.** We request further guidance on this point. It may be necessary for the performance of a contract to share telematics data with a third party.
28. **Data should be retained only for as long as necessary for the provision of the service.** We agree where the data is processed under Article 6.1(b) and this will include a time period to service claims and deal with legal disputes under the contract. Data may also be required for future analytics and product development and provided the data controller has a legal basis and provides sufficient levels of transparency, we believe this should not be restricted by this recommendation.
29. **Data subjects should be able to delete data when vehicle is put up for sale.** We agree that the data should no longer be used for telematics propositions in relation to the vehicle. However, if the data is anonymised or pseudonymised, it should be possible to use it provided

there is a legal basis and adequate transparency, and this usage should not be restricted by this recommendation. We have answered this on the assumption that the guidance refers to data stored in the vehicle or transferred elsewhere for processing. Further clarity is requested if this assumption is incorrect.

30. **Data subjects should, where feasible, have direct access to data generated by these applications.** Currently this would be available from the insurer under a data subject access request (DSAR). We would appreciate further guidance on what is meant by 'direct access' and 'data' in this context. For example, does the direct access go further than the customers' DSAR rights and does 'data' need to be explained, or is access to the 'raw' data sufficient in this context?

### **Rights of the data subject**

31. The EDPB notes in para 88 that 'drivers should be enabled to stop the collection of certain types of data, temporarily or permanently, at any moment, except if a specific legislation provides otherwise or if the data are essential to the critical functions of the vehicle'. Disabling data collection can seriously disrupt the provision of telematics insurance. If drivers were able to temporarily or permanently stop the collection of data, it would not be possible to:
- carry out a risk assessment to determine fair insurance premiums through analysis of driving behaviour;
  - provide meaningful feedback to enable the driver to improve their driving skills and reduce unnecessary risks to society;
  - provide data to improve breakdown assistance.
32. We urge the EDPB to reconsider the principles outlined in para 88 to ensure that they are compatible with telematics insurance.
33. It would be helpful for the EDPB to clarify what forms of data processing it seeks to limit through this requirement. If the EDPB is concerned about data not related to the purpose of the telematics contract itself being processed, this should be made clear in the guidelines. We would, however, point out that this could have a negative impact on other services that bring economic and safety benefits to the vehicle user, for example data that can be used for improved breakdown assistance.

### **Further processing and transmitting of personal data**

34. The EDPB recommends in para 95 that 'the data subject's consent be systematically obtained before their data are transmitted to a commercial partner acting as a data controller. The recommendation is unfeasible in practice.

### **Accessing raw data and recommendations for processing**

35. The suggestion at paragraph 108 that raw data is not required by insurers and should only be accessed by telematics service providers to create driving scores which insurers would use





to create a price is a major concern. Provided insurers can demonstrate that raw telematics data is being protected in accordance with GDPR requirements, we do not believe that insurers should be prevented from accessing raw data for the following reasons:

- a. This view suggests a uniform approach to risk scoring. This is a concern as it would lead to a market where risk is viewed exactly the same by all insurers and competition intrinsically reduced.
- b. It would result in the lack of direct access to raw data for insurers which would restrict the ability to create accurate risk models and algorithms. The raw data is also required to ensure models and algorithms are regularly audited and reviewed for accuracy and relevance. Data minimisation principles would be applied to any such use of raw data.
- c. It would limit the ability refine underwriting to develop innovative data-driven pricing and product propositions for customers.
- d. Third parties could not produce these risk models for insurers as insurers have their own algorithmic processes which are protected by insurers' own intellectual property rights.
- e. If a scoring algorithm has been developed by a third party the insurer, as the controller of those scores, will be required to understand the raw data that has been used to create that score to ensure that it is meeting its obligations from a financial services regulatory, contractual and data protection perspective, including to ensure fair and unbiased outcomes for its customers.
- f. Use of the data is important to deal with claims and provide customers with further information on the logic behind any automated decision making.

**ASSOCIATION OF BRITISH INSURERS**

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