

PayePass eGuide

DATA SUBJECT ACCESS REQUESTS

DSAR'S; WILL THEY BECOME
EASIER TO HANDLE?



Most businesses are well aware of the significant amount of time and resources taken up when having to deal with DSARs, but the increase in them over recent years is becoming a concern for data controllers throughout the UK. The general public are increasingly more aware of their personal data rights. Additionally, the volume of personal data held by data controllers can make responding to DSARs is a time consuming and expensive process, even more so if they are not dealt with correctly.



Dealing with DSARs should not be taken lightly. Controllers that fail to respond to DSARs in an appropriate or timely manner will likely be in breach of their obligations under Article 15 of the General Data Protection Regulation (GDPR). This can result in disgruntled customers and/or employees, an expensive data claim and in some instances a financial penalty or enquiries into your data protection practices from the ICO.

The 'Data: a new direction' consultation may ease the burden on organisations facing a high volume of DSARs. But the question remains, is a smarter solution required to address the problem?

A new way of processing

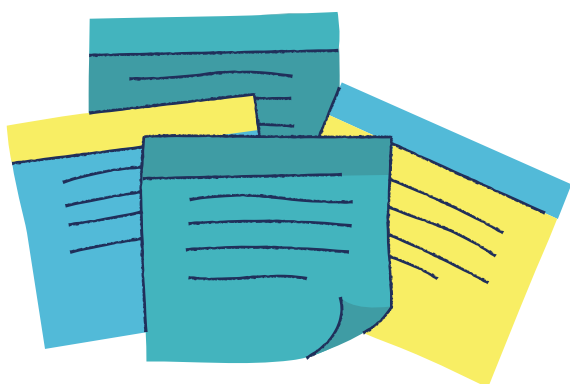
The government are mindful of the impact of responding to DSARs on businesses' operations. In September 2021, the Department for Digital, Culture, Media & Sport published a consultation report with an intention to "keep people's data safe and secure, while ushering in a new golden age of growth and innovation right across the UK".



The report highlighted the impact, particularly on small organisations, when a high volume of DSARs are submitted and how this may significantly impact resources. To combat this the government have proposed the following:

Amending the threshold for responding to DSAR

The consultation recognised that the current provisions for refusing to comply or fully comply with a DSAR on grounds of being "manifestly unfounded" or "manifestly excessive" are not commonly relied upon. It also recognised that DSARs were in some instances not being used as a vehicle to exercise a right of access to personal data, but to seek access to documents in connection with litigation.



In an attempt to limit DSARs to those which are truly seeking access to their personal data, the government have proposed that the test for vexatious requests applied under the Freedom of Information Act 2000 (whether the request is likely to "cause a disproportionate or unjustifiable level of distress, disruption or irritation") should be applied.

Further, the context and history of a request, including the identity of the requester and any previous contact with them should be taken into account.



Introducing a fee for submitting DSAR's and at a cost cap

Here the government would introduce a cost ceiling, akin to those adopted by public bodies under the Freedom of Information Act 2000, typically being a cap of several hundred pounds. Under this proposal organisations remain under a duty to respond to a DSAR, but only within the constraints of the cost limit. This would serve to limit the extent of the personal information an organisation could search for, but not serve as grounds to oppose a DSAR outright.

The Information Commissioner's Office (ICO) issued a lengthy response to the consultation in early October 2021. Considering the DSAR response proposals, the ICO supported the adoption of greater clarity, where requests should be challenged on the basis that they are vexatious but made clear that this was balanced against ensuring that these measures did not undermine a data subject's right of access.

The ICO displayed greater concern with the proposals of reintroducing a fee when submitting a DSAR, particularly where it may restrict the rights of individuals with "limited financial means and who may be vulnerable in other ways". The ICO concluded that "a fuller assessment is needed to understand the implications of introducing a nominal fee, which potentially has a wide-ranging impact on people. This will ensure that any change is not disproportionate."



Adopting a smart approach

Applying a costs cap and allowing controllers to refuse DSARs where they are not being used for its true purpose may reduce the burden on business. However, this may introduce a new strand of time-consuming correspondence with data subjects and the ICO explaining the reasons why a DSAR has either been refused or responded to in a particular manner.

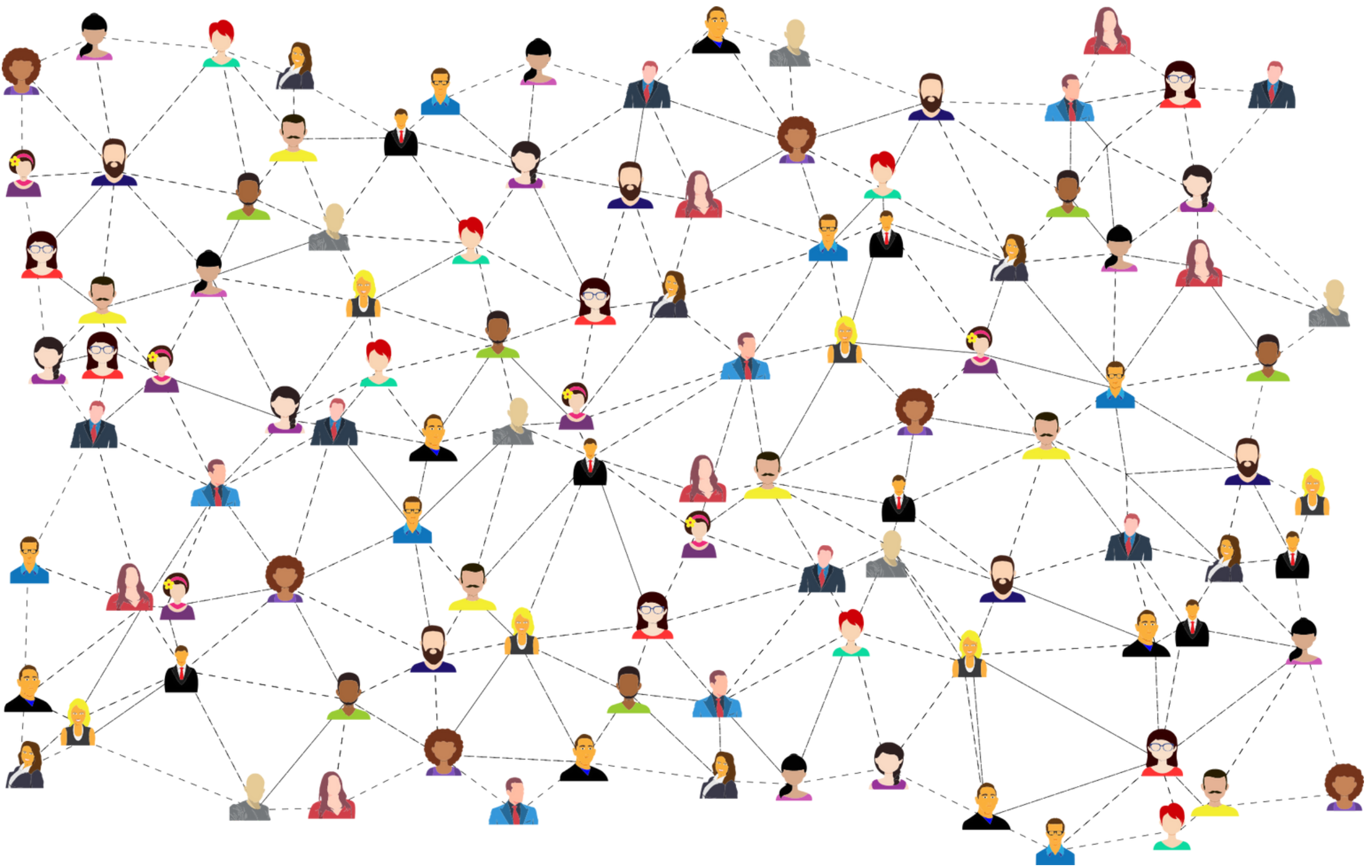
Regardless of the measures eventually adopted to combat the increased demand and cost of responding to DSARs, they are here to stay so businesses should continue to improve how they are processed from beginning to end.

When addressing the escalating burden of DSARs in their consultation response, the ICO noted "We have flagged the importance of taking a data protection by design approach when procuring and configuring new IT systems so that they facilitate providing information to people who may exercise their right of access." This highlights that the way forward for businesses is to make improvements within their IT infrastructure to reduce the burden of having to deal with DSARs.



In conclusion

DSARs are here to stay and the number of requests that businesses receive will very likely continue to increase. Coupled with increased public awareness of their data protection and access rights, having the correct procedures, processes and training in place will prove to be wise investments and reduce the negative consequences of getting handling of DSARs wrong.



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