



Date	24 February 2021
Agenda Item	7

## Report to West Lothian Integration Joint Board Audit, Risk and Governance Committee

**Report Title: Data Protection Compliance**

**Report By: Chief Officer**

Summary of Report and Implications	
<b>Purpose</b>	This report: (tick any that apply).
	- seeks a decision <input checked="" type="checkbox"/>
	- is to provide assurance <input checked="" type="checkbox"/>
	- is for information <input checked="" type="checkbox"/>
	- is for discussion <input type="checkbox"/>
	The purpose of this report is to update the Committee on compliance with data protection law and to recommend that the Chief Officer formally writes to both council and health board to request that a Data Protection Officer is appointed to the IJB as a necessary support service.
<b>Recommendations</b>	<p>It is recommended that the Committee:</p> <ol style="list-style-type: none"> <li>1. Note the impact of the EU Exit on data protection law is minimal;</li> <li>2. Note that the IJB is largely compliant with data protection law and has limited exposure to personal data;</li> <li>3. Note the appointment of a suitable Data Protection Officer (DPO) remains outstanding;</li> <li>4. Note the DPO arrangements in other Integration Authorities; and</li> <li>5. Agree that the Chief Officer will formally request support in the form of an appointed DPO from council and health board.</li> </ol>
<b>Directions to NHS Lothian and/or West Lothian Council</b>	A direction(s) is not required.
<b>Resource/ Finance/ Staffing</b>	None.
<b>Policy/Legal</b>	<a href="#">Data Protection Act 2018</a>
<b>Risk</b>	Minimal if compliant with the legislation.

<b>Equality, Health Inequalities, Environmental and Sustainability Issues</b>	The report has been assessed as having little or no relevance with regard to equality or the Public Sector Equality Duty. As a result, an equality impact assessment has not been conducted.
<b>Strategic Planning and Commissioning</b>	None.
<b>Locality Planning</b>	None.
<b>Engagement</b>	Relevant officers in NHS Lothian and West Lothian Council.

Terms of Report	
<b>1. Background</b>	
1.1	On 26 May 2018, the Data Protection Act 1998 was replaced by the General Data Protection Regulation (GDPR) (Regulation) (EU) 2016/679, which introduced new rules on how organisations collect and process personal data. This was enshrined in UK law as the <a href="#">Data Protection Act 2018</a> .
1.2	It aimed to give individuals more power and control over their personal data by strengthening and unifying data protection for all EU individuals, giving people more rights and control over how their personal data is handled by organisations such as the IJB, Scottish Government, NHS Lothian and the council.
<b>2. EU Exit</b>	
2.1	Following the end of the transition period on 31 December 2020, the Data Protection Act 2018 (DPA 2018) continues to apply. The provisions of the EU GDPR were incorporated directly into UK law at the end of the transition period. The UK GDPR sits alongside the DPA 2018 with some technical amendments so that it works in a UK-only context. The key principles, rights and obligations all remain the same.
2.2	The key areas where the UK amendments make a difference are in the provisions on territorial scope and international transfers, which are not relevant to the IJB.
2.3	The data protection provisions set out in the <a href="#">Withdrawal Agreement</a> stipulate that organisations will need to comply with EU data protection law (as it stands on 31 December 2020) when processing personal data that was gathered before the end of the transition period.
<b>3. Compliance with Data Protection Act 2018 / UK GDPR</b>	
3.1	Historically, there have been limited implications for the IJB, which would not usually hold or process personal information. Where personal information is held and processed as part of functions delegated to the Board, this is likely to be by one of the parent organisations when a service is accessed.
3.2	Personal information is collected that pertains to Board Members, for example, information that is part of the Register of Interests. This information is then held on a council system and processed

by council officers supporting the Board, but it is the IJB that is required to collect the information and so it is the IJB that retains responsibility as 'data controller'. Where there is a misuse or breach of personal data, it would be up to the Information Commissioners Office (ICO) to determine which organisation was responsible for the infringement.

3.3 Under the new Data Protection Act and since May 2018, the requirement for a privacy statement on communications is significantly enhanced and more information on any forms, paper and electronic, is required. This needs to include details of what is being processed, the legal basis for doing so, how long we keep information and who we share it with, along with a contact point for any queries regarding our processing of this data (the Data Protection Officer).

3.4 This is relevant where the Board instructs officers of either parent organisation to engage with stakeholders on its behalf. Only once have officers collected personal information from stakeholders on behalf of the IJB for the Strategic Plan and Locality Plans consultations and a privacy statement was published in line with the GDPR regulations with a dedicated email address for enquiries to the Data Protection Officer.

3.5 As Integration Authorities and the role of Chief Officers evolve and as we await the Scottish Government's response to the Independent Review of Adult Social Care, it would be prudent to review compliance with the Data Protection Act 2018 in more detail, once a permanent Data Protection Officer is appointed.

#### **4. Data Protection Officer**

4.1 On 1 May 2018, the IJB appointed the Project Officer as interim Data Protection Officer until more satisfactory arrangements could be made. This has been an outstanding issue of compliance in the running log of governance issues, most recently reported to the Committee on 2 December 2020.

4.2 Importantly, the DPO:

- Must be appointed on the basis of professional qualities and, in particular, expert knowledge on data protection law and practices
- May be a staff member or an external service provider
- Contact details must be provided to the relevant Data Protection Authority
- Must be provided with appropriate resources to carry out their tasks and maintain their expert knowledge
- Must report directly to the highest level of management
- Must not carry out any other tasks that could result in a conflict of interest.

4.3 The interim DPO lacks the expert knowledge on data protection law and practices required of the role, however, informal discussions with the council who provide the vast majority of support services to the IJB have not reached a satisfactory conclusion.

4.4 A survey of other Integration Authorities was conducted to explore what arrangements other IJB's have in place and 14 responded:

- 1 IJB had no DPO in place
- 6 IJBs shared a DPO with either the council or health board
- 3 IJBs draw on support from both council and health board's DPO as required
- 1 IJB shared a single DPO between all three parties
- 2 IJBs had their own DPO "seconded" into the role
- 1 IJB had a DPO provided by the council but it was not clear if it was a shared role

4.5 The majority of respondents indicated that they have some sort of support from either council or health board, whether that be advice as and when required or sharing the DPO with one or in one instance both organisations.

4.6	It is recommended that the Chief Officer formally write to the council and health board to highlight the gap in the support currently provided to the IJB in relation to the appointment of a suitable Data Protection Officer, and to request that they consider providing this support.
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<b>Appendices</b>	None.
<b>References</b>	IJB Audit Risk and Governance Committee meetings of 1 May 2018; 2 December 2020  <a href="#">Data Protection Act 2018</a>
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