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L10-17 | DATA PROTECTION OFFICER

Introduction

Legal briefings L04-17 and L06-17 confirmed that parish councils and parish meetings in England and community councils in Wales are required, under the General Data Protection Regulation (effective on 25 May 2018) and new UK legislation expected next year, to appoint a Data Protection Officer (“DPO”).

The purpose of this briefing is to provide more information about (i) a DPO’s responsibilities and (ii) the person appointed as DPO.

i) The DPO’s responsibilities:

The DPO’s responsibilities are as follows.

- to understand the nature, scope, context and purposes of the council’s or parish meeting’s processing activities and associated risks;
- to be involved in the council’s or parish meeting’s decisions/activities which have data protection law implications;
- to inform, advise and make recommendations to the council or parish meeting in respect of data protection law compliance;
- to monitor and audit the council’s or parish meeting’s compliance with data protection law;
- to raise awareness of data protection law with councillors and staff in a council or with the chairman and staff, if any, of a parish meeting.
- to directly report to the “highest management level” (for a council, this would be full council and for a parish meeting, this would mean its chairman);
- to assist the council or parish meeting in carrying out privacy impact assessments when these are necessary;
- to be the contact point for the Information Commissioner’s Office (ICO) and for data subjects and
- to be consulted by council or parish meeting if a data breach has occurred.

Notwithstanding the remit of the DPO's responsibilities, GDPR confirms that the council or parish meeting is responsible for compliance with data protection law, not the DPO.

ii) The person appointed as the DPO

L04-17 confirms that the DPO may be an internal or external appointment. In other words, the DPO may be a member of staff or appointed under a service contract. A single DPO may be designated for more than one public authority, taking account of their organisational structure and size. This means a group of councils and parish meetings (or other public authorities such as principal authorities) would be permitted to commission the services of the same DPO or DPO business, provided that a DPO is assigned to each organisation. Leaving the issue of costs aside, a DPO who is a member of staff may be more beneficial than an external appointment, not least because he will be more accessible to the organisation and able to respond to issues as they arise.

The DPO must be appointed on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to perform the responsibilities described in (i) above .

Although a DPO is allowed to have functions or responsibilities additional to those arising from his DPO role, those other tasks and duties must not conflict with the performance of his DPO responsibilities. This means, in particular, that the DPO cannot hold a position which determines the purposes and the means of the processing of personal data. The need to ensure that a DPO can work without conflict of interests is closely linked to the requirement for the DPO to act in an independent manner.

The Article 29 Working Party, which is made up of the regulatory bodies for data protection law which operate in EU member states (and includes the ICO), has produced useful guidance about the DPO. The guidance states:

“As a rule of thumb, conflicting positions may include senior management positions (such as chief executive, chief operating, chief financial, chief medical officer, head of marketing department, head of Human Resources or head of IT departments) but also other roles lower down in the organisational structure if such positions or roles lead to the determination of purposes and means of processing.”

Can clerks or RFOs be DPOs?

Based on the drafting of GDPR and the guidance from the Article 29 Working Party, it is NALC's view that most clerks and RFOs cannot be designated as a council's DPO. This is because although they may satisfy some requirements of the job, they will not satisfy all of them which are summarised below.

- an absence of conflicts of interests (which may arise from responsibilities as a clerk/ RFO and may include processing activities);
- independence;
- expert knowledge of data protection law and practices and related professional ethics to effectively advise and influence full council and
- adequate time to perform DPO role (many clerks/ RFOs work part-time).