



Specialist Professional Services

DPO NEWSLETTER – JUNE 2024

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Changes to DPO Service



May 2018 doesn't seem like a long time ago! However, it's now been just over 6 years since the GDPR became enforceable! Since then, the England cricket team have won the world cup, the Lionesses won Euro 2022, the UK has left the EU, and we've had a global pandemic!

Going back to the data protection, the UK-GDPR and Data Protection Act 2018 have been formed, and the UK's replacement legislation (the DPDI) has been through two iterations with the 2nd version effectively dying off at the 11th hour with the recent call for a general election (see article below). What an eventful 6 years it has been!

We are keen to ensure that the service evolves to suit our client's needs, and we are making the following changes to our DPO Service:

- **Operational Year:** We initially ran our operational year in line with when GDPR became enforceable (26th May – 25th May). However, we quickly found how hard it was to ensure all compliance reviews were completed within these dates (especially in the education sector with the deadlines falling within half term!). We are therefore changing our operational year to run:
 - o 1st September to 31st August for our education clients
 - o 1st April to 31st March for all of our other clients (e.g. Charities, Town Councils etc)
- **FOI/EIR:** Historically we've only advised on FOI/EIR requests where they engage personal data, or where the client has paid for the additional service. However, given we have a team of FOI/EIR experts serving 2 councils covering over 2500 requests a year we have decided to include this within the DPO Service for current and new education clients.
- **Compliance Reviews:** We have historically completed full reviews either onsite or remotely for all of our clients. However, we have trialled a new approach with two of our larger, well performing MAT clients. This involved the replacement of a

single annual review with 3 support calls during the year (1 per term – winter, spring, summer). The calls:

- Focus on the higher risk recommendations where discussions can be had on how to implement them.
- Still provide a report showing progress made and any further actions, with the last report (summer term) including a revised compliance score.
- Allow for momentum to be maintained – we often found that a year flies by, and the DP Leads hadn't managed to complete some of the actions resulting in the reports being very similar.
- Allowed for current matters to be discussed face to face.
- Reduced the impact on the DP Leads – rather than having to be out of action for half a day, the support calls (roughly 30-45m each) were easier to arrange.

Unless we've agreed with you otherwise, we will be implementing this model for those clients who are in a good compliance position – scoring 70% or more in their previous review.

As always, if you have any queries please get in touch.

Data Protection and Digital Information Bill 2 (DPDI2)



As previously advised the second iteration of the DPDI was moving its way through the House of Commons and House of Lords and was expected to receive Royal Assent during June/July before becoming enacted. The news was that there was going to be a period of time for organisations to make adjustments before it was to be enforced (much like GDPR 2016, which became enforced 25th May 2018).

However...

On the 22nd May, the Prime Minister called for a General Election on the 4th July. There were initial concerns that the DPDI2 was going to be included in the 'washing up' whereby legislation is effectively fast tracked through without robust scrutiny by the houses and ministers. We now know this it wasn't included, so it is now considered dead at this point. So the UK-GDPR and Data Protection Act 2018 are here to stay for now.

We believe that changes to the legislative framework is needed (certainly around AI). However, whether a change of power happens after July 4th or not, we can't see data protection legislation being high on the list of early legislative changes! As always, we'll keep you posted with any updates in this area.

Update to the DfE Attendance Data Capture Project

(The Education (Information About Individual Pupils) (England) (Amendment) Regulations 2024)



**Department
for Education**

We have previously advised on the DfE's real-time attendance data capture project, relying on a Wonde integration, in order for the DfE to extract attendance data from your MIS. Our advice over the past two years has been to exercise caution, as we had a number of concerns regarding the governance of this project...concerns that we know have been echoed by Data Protection professionals around the country.

This has been a long-standing issue, where we have been liaising directly with both the Information Commissioner's Office and the DfE, and we're still not satisfied that the DfE are fully considering the data protection implications with this.

Our key concerns are:

- **Retention** - The DfE have stated they intend to retain the attendance data for "at least 66 years". When we queried this, they advised that they have "always" retained attendance data until the child's retirement age, and that they were entitled to under their legislation. We challenged that the legislation only obligates them to monitor attendance until the pupil turns 18...and we never got a response to that.
- **Purpose** - Since the beginning of this project, the DfE have increased the scope of the information they are extracting from your MIS, from just attendance data, to now also include, among other things, SEN status, FSM status, and safeguarding involvement. Once you grant the DfE access to your Wonde, you lose all control over what the DfE can extract. When we queried what they wanted the information for, their response was "We don't know what we might need it for in the future". The impact of Covid was cited, but that doesn't explain why "it's what they've always done". When asked whether the information could be anonymised, so they could study the impacts on particular cohorts of children, they replied that their system didn't have the capability of anonymising the data.
- **Control** - According to the DfE's Data Protection Impact Assessment, people have the right to object to the sharing of the data in this manner. However, schools only have the option to enable or disable: they can't flag individual records. This means that while they can Object as well as ask for the sharing to be Restricted while their Objection is considered, in practice this just isn't possible.

It should be noted that the DfE were able to satisfy our concerns regarding Data Accuracy.

We are aware that schools have been contacted recently, regarding the Education (Information about Individual Pupils) (England) (Amendment) Regulations 2024, which will be enforceable from August, and we have been asked whether our position in this regard has now changed.

As a general statement, it appears that schools are interpreting this Amendment that it makes the Wonde integration compulsory. However, our interpretation of the legislation is different. The Amendment has added "Attendance Data" to the list of records that must be provided to the DfE on-demand, within 14 working days (see the Education (Information About Individual Pupils) (England) Regulations 2013). The Amendment does go on to say that schools may wish to simplify this process by using the automated tools made available by the DfE (ie, the Wonde integration), so the DfE can obtain this data directly.

This doesn't mean that you're obligated to grant the DfE access to your MIS! It just means that you will have to send your attendance data to the DfE within 14 working days if they make a request for it.

Granting the DfE access to your MIS via Wonde will certainly make your lives easier, as you won't need to actively extract and send the attendance data each time it's asked for. Instead, the DfE would just help themselves to it. So naturally, we don't want to be the cause of an increased workload...if the DfE suddenly start making these requests on you daily!

As your Data Protection Officer, all we can do is advise you of the risks and of our concerns. The Information Commissioner's Office also alluded to the fact that adequate governance isn't in place, and the DfE haven't been able to provide reassurances over these matters. Our concerns regarding Purpose and Control, which are directly linked to the Wonde integration, remain. Our significant concern relating to retention has extended beyond the Wonde integration, as the DfE have confirmed to us that they've

“always done that”. One West are currently considering the best course of action in this regard, which may well be a formal complaint to the Information Commissioner’s Office.

To summarise, the Amendment has only added attendance data to existing datasets that must be provided to the DfE if requested. We acknowledge the Wonde integration would simplify this process for you, but our three key concerns remain. As your DPO, we can only advise, and as such, we strongly recommend that you fully consider the potential long-term implications to your students if you do grant the DfE access to your MIS via Wonde.

Long-term Storage of Accident Records



Records of any accidents need to be retained for three years (for adult casualties), or on the casualty’s 21st birthday (if they were under 18 at the time of the accident). The reason for this is that, under the Limitation Act 1980, an individual is permitted to make a civil claim for a personal injury up to three years after the incident. A child isn’t considered to be able to make a decision regarding a civil claim, so their three years begins on their 18th birthday. The accident records need to be retained, so they can be referred to in the event of a civil claim.

Subsequently, an organisation must be able find the records of the accident...and for a child, these records could be decades old.

It’s also important to note that a civil claim could be brought for a seemingly minor incident, including bumps and grazes.

Anecdotally, we know that historical accident records tend to be stored by date, often in books that get filed away once completed. We’ve even seen exercise books, known as “Bump Books”, where multiple reports of minor incidents are all recorded together. Trying to hunt through these hundreds...possibly thousands...of records would be an incredible burden.

And if you’ve had a former pupil, now 20 years old, making a Subject Access Request for “everything”, you’ve got to hunt through all those records, on the off chance there’s an accident record somewhere.

Accident records should be filed by the casualty’s name, rather than incident date. For children’s records, you might find it easier to file by Date of Birth, as this should still enable you to find an individual’s record and gives you a clear indication when the records have reached their retention period and can be destroyed.

However you find is the best way to record and file accidents is really up to you. It’s got to be simple, so that it works for you. But when it comes to storage, always remember there is a reason why you have to retain them, and subsequently, you may have to be able to easily find a record one day!

File Naming Conventions



The last few months have seen a marked increase in data breaches as a result of the wrong files being sent by email or by post. The most common cause for this has been the wrong document being selected from the file because the File Name hasn't been clear enough.

Remember!

- As long as access to records is restricted to those who need to have access, you CAN use full names in a file name.
 - The majority of these breaches have been caused because the filename only included the individual's initials.
- Have the individual's name at the start of the filename, e.g. "20240630 Joe Bloggs Updated EHCP".
- Keep filenames succinct: when selecting documents you can't always see the full title if it's got a long name.
- Once you've attached the document, open it from the email to check, before you send.
- And...as always...never free-type the recipient's email address. Get them to email you first and reply to their email!

Remember the One West team is here if you have any data protection enquires.

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From the One West team



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