



Agenda item: 12.

## **Integration Joint Board**

Date of Meeting: 27 June 2018.

Subject: Appointment of Data Protection Officer.

### **1. Summary**

1.1. The General Data Protection Regulation requires the Integration Joint Board to appoint a Data Protection Officer. The Data Protection Officer is responsible for advising the Board of its obligations in terms of data protection legislation and acting as the Board's contact point for the Information Commissioner's Officer on issues relating to the processing of personal data.

1.2. In a Briefing Note to Members dated 28 March 2018 the Board's outgoing Chief Officer nominated Gavin Mitchell, Head of Legal Services, Monitoring Officer and Data Protection Officer at Orkney Islands Council, and the Board's Standards Officer, for the role of Data Protection Officer to the Board with a report to be presented to the Meeting of the Board on 27 June 2018 to formalise this appointment.

### **2. Purpose**

2.1. To approve the appointment of Gavin Mitchell as its Data Protection Officer.

### **3. Recommendations**

The Integration Joint Board is invited to:

3.1. Formally appoint Gavin Mitchell, Head of Legal Services, Orkney Islands Council, as the Data Protection Officer for the Integration Joint Board.

### **4. Background**

4.1. The General Data Protection Regulation came into force on 25 May 2018.

4.2. The General Data Protection Regulation replaces the Data Protection Act 1998 and makes changes to the law in relation to the processing of personal information. One of these changes (Article 37) is a new obligation on public authorities, including the Integration Joint Board, to appoint a Data Protection Officer.

4.3. Article 39 of the General Data Protection Regulation prescribes minimum tasks of the Data Protection Officer, which are listed in section 6 below.

## **5. Designation of the Data Protection Officer**

5.1. In terms of Article 37 of the General Data Protection Regulation, the Data Protection Officer must be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in section 6 below.

5.2. The Data Protection Officer may be a staff member of the Board or fulfil the tasks on the basis of a service contract.

5.3. The Board must publish the contact details of the Data Protection Officer and communicate these to the Information Commissioner's Office.

## **6. Tasks of the Data Protection Officer**

6.1. In terms of Article 39 of the General Data Protection Regulation, the Data Protection Officer must have the ability to fulfil the following minimum tasks:

- To inform and advise the Board and its Members and Officers about their obligations to comply with the General Data Protection Regulation and other data protection laws.
- To monitor compliance with the General Data Protection Regulation, including the assignment of responsibilities, awareness-raising and training of staff involved in the processing operations and related audits.
- To provide advice where requested about data protection impact assessments and to monitor their performance.
- To co-operate with the supervisory authority (the Information Commissioner's Office).
- To act as the contact point for the Information Commissioner's Office on issues relating to the processing of personal data.

## **7. Position of the Data Protection Officer**

7.1. In terms of Article 38 of the General Data Protection Regulation, the Data Protection Officer must report directly to the highest management level of the organisation. In the present case it is considered that this would be achieved by ensuring that the Data Protection Officer has direct access to the Members of the Board as required.

7.2. Article 38 of the Regulation provides that the Board must support the Data Protection Officer in the performance of his/her tasks by providing the resources necessary to carry out those tasks and access to personal data and processing operations, and resources to maintain his/her expert knowledge.

7.3. In addition, Article 38 provides that the Data Protection Officer must be allowed to perform his/her tasks in an independent manner and should not receive any instructions regarding the discharge of his/her statutory functions. The Data Protection Officer cannot be dismissed or penalised for performing his/her statutory functions.

## **8. Qualities of the Data Protection Officer**

8.1. According to the A29 Guidance, published by the Article 29 Working Party, which is an advisory body made up of a representative from the data protection authority of each EU Member State, the European Data Protection Supervisor and the European Commission, the Data Protection Officer should have expertise in national and European data protection laws and practices and an in-depth understanding of the General Data Protection Regulation.

8.2. According to the A29 Guidance, the necessary level of expert knowledge should be determined according to the data processing operations carried out by the organisation and the protection required for the personal data being processed.

8.3. The minimum necessary skills and expertise include expertise in national and European data protection laws and practices, including an in-depth:

- Understanding of the General Data Protection Regulation.
- Understanding of the processing operations carried out.
- Understanding of information technologies and information security.
- Knowledge of the business sector and the organisation.
- Ability to promote a data protection culture within the organisation.

## **9. Conflicts of Interest**

9.1. In terms of Article 38 of the General Data Protection Regulation, the Data Protection Officer may “fulfil other tasks and duties”, but the Board must ensure that “any such tasks and duties do not result in a conflict of interests”.

9.2. The absence of conflict of interests is closely linked to the requirement to act in an independent manner referred to in section 7.3 above. In terms of the A29 Guidance, although the Data Protection Officer is allowed to have other functions, he/she can only be entrusted with other tasks and duties provided that these do not give rise to conflicts of interest.

## **10. Appointment**

10.1. Gavin Mitchell, who is Orkney Islands Council's Head of Legal Services, Monitoring Officer and Data Protection Officer, acts as the Standards Officer to the Board, which is also a role where the functions need to be discharged in an independent manner. Mr Mitchell has significant knowledge and experience in data protection law and has managed the Board's preparations to date for the General Data Protection Regulation.

10.2. It is assessed that the roles held by Mr Mitchell at Orkney Islands Council, including the role of Data Protection Officer for the Council, would present no issue of conflict of interest in relation to his proposed appointment as Data Protection Officer to the Board.

10.3. In a Briefing Note to Members dated 28 March 2018 the Board's outgoing Chief Officer nominated Mr Mitchell for the role of Data Protection Officer with a report to be presented to the Meeting of the Board on 27 June 2018 to formalise this appointment.

10.4. It is submitted that Mr Mitchell meets the statutory criteria for the Data Protection Officer, as set out in section 5 above and is capable of discharging the statutory functions set out in section 6.

## 11. Contribution to quality

Please indicate which of the Council Plan 2018 to 2023 and 2020 vision/quality ambitions are supported in this report adding Yes or No to the relevant area(s):

<b>Promoting survival:</b> To support our communities.	No.
<b>Promoting sustainability:</b> To make sure economic, environmental and social factors are balanced.	No.
<b>Promoting equality:</b> To encourage services to provide equal opportunities for everyone.	No.
<b>Working together:</b> To overcome issues more effectively through partnership working.	Yes.
<b>Working with communities:</b> To involve community councils, community groups, voluntary groups and individuals in the process.	No.
<b>Working to provide better services:</b> To improve the planning and delivery of services.	No.
<b>Safe:</b> Avoiding injuries to patients from healthcare that is intended to help them.	No.
<b>Effective:</b> Providing services based on scientific knowledge.	No.
<b>Efficient:</b> Avoiding waste, including waste of equipment, supplies, ideas, and energy.	Yes.

## 12. Resource implications and identified source of funding

12.1. There are no financial implications arising directly from this report. Mr Mitchell is employed by Orkney Islands Council and will continue in his substantive roles at the Council, and the duties of Data Protection Officer for the Board will be added to his existing remit.

## 13. Risk and Equality assessment

13.1. Failure to appoint a Data Protection Officer will mean the Board is in breach of its statutory duties. Appointment of a Data Protection Officer will ensure compliance by the Board with its statutory obligation to appoint a Data Protection Officer and will ensure that the Board is in a position to receive the advice that it requires to meet its data protection obligations.

## 14. Direction Required

Please indicate if this report requires a direction to be passed to:

NHS Orkney.	No.
Orkney Islands Council.	No.
Both NHS Orkney and Orkney Islands Council.	No.

## 15. Conclusion

15.1. The appointment of a Data Protection Officer is a statutory requirement on the Board. This report recommends the formal appointment of Gavin Mitchell as Data Protection Officer for the Orkney Integration Joint Board for the reasons outlined in this report.

## 16. Authors

16.1. Scott Hunter, Head of Children and Families, Criminal Justice and Chief Social Work Officer.

16.2. Gavin Mitchell, Head of Legal Services, Orkney Islands Council.

## 17. Contact details

17.1. Email: [scott.hunter@orkney.gov.uk](mailto:scott.hunter@orkney.gov.uk), telephone: 01856 873535 extension 2601.

17.2. Email: [gavin.mitchell@orkney.gov.uk](mailto:gavin.mitchell@orkney.gov.uk), telephone: 01856 873535 extension 2233.

## 18. Supporting documents

18.1. Appendix 1: Equality Impact Assessment.