

Clare Adamson MSP  
Convener  
Education & Skills Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

08 July 2019

Dear Ms Adamson

**Petition PE 1692**

Thank you for your letter of 12 June.

As I understand from its content, the Committee is seeking further information on three specific matters:

1. an update on the ICO's work following the introduction of GDPR including any issuing of updated advice and other work with organisations to ensure the shift in data sharing practices from those adopted under the Data Protection Act (including moving away from practices based on 2013 ICO advice and 2016 advice);
2. whether there have been any recent circumstances where the ICO has requested that an organisation removes particular out of date guidance from its websites, training programmes etc.; and
3. how resource intensive it would be, in circumstances where use of out of date advice by organisations is specifically raised with the ICO by third parties, to request that those organisations seek to update their websites or processes.

I shall endeavour to address each point separately:

**Issuing of advice on data sharing practices**

The Information Commissioner was first required to produce a statutory Data Sharing Code of Practice under section 52 of the Data Protection Act 1998. This requirement is replicated in section 121 of the Data Protection Act 2018 (DPA 18), and the existing Code is in the process of being updated to account for the change in legislation, the final version of which is due to be published towards the end of this summer.

Since the commencement of the GDPR, all public authorities are required to have appointed a Data Protection Officer (DPO) whose duties – which include monitoring levels of compliance with data protection laws - are prescribed in statute. Moreover, the DPO must report to the highest management level of the organisation but operate independently of it. Whilst the ICO will still assist DPOs when absolutely necessary, the burden of ensuring an organisation's compliance with GDPR will fall upon them.

### **Requests to remove outdated guidance**

As stated in the ICO's previous submission to the Petitions Committee, we do not routinely seek out outdated guidance with a view to asking for it to be updated. We expect data controllers to recognise that advice has been updated and amend their internal guidance accordingly. The Information Commissioner has no locus to *require* the removal or updating of material on an organisation's website and it is for the DPO to ensure that all internal policies and procedures are compliant with the legislation.

### **Resource implications of proactive contact**

As indicated above, the Information Commissioner has no locus over the content of an organisation's website and we advise individuals who raise concerns of that nature with us to liaise directly with the organisation. Individuals whose personal data has been processed inappropriately by an organisation can request that we undertake an assessment of compliance if, having raised the matter with it first, they are dissatisfied with the response. Please note that to undertake an assessment, we would need evidence that the processing was not compliant and the presence of an out-of-date guidance document on its website would not, in itself, be sufficient proof of non-compliant processing.

Perhaps it would be helpful to provide you with some context around the issuing of the ICO's 2013 and 2016 advice. As alluded to in the Scottish Government submission to the Public Petitions Committee of 30 July 2018, the ICO had been invited to attend a GIRFEC Programme Board meeting on 12 February 2013. At that meeting, I was asked for the ICO's view regarding the sharing of information relating to a child or young person where practitioners believed they were on a pathway to harm. It was my view that if, in their professional judgement and experience, practitioners believed that, without intervention, the child was on a pathway to harm, data protection should not be a barrier to the sharing of *proportionate, appropriate and timely* information to prevent such an escalation. Given the Board's understanding that practitioners believed data protection law would prevent them from sharing information in these cases, I was asked by the

Board if I would be prepared to provide this view in writing for publication on the GIRFEC page of the Scottish Government website.

After the Supreme Court Judgment of 2016, a number of enquiries were made to my office regarding the validity of the 2013 advice in light of the outcome. I was asked formally by some stakeholders to provide written clarification of the position as a result of the Judgment and this formed the basis of the 2016 advice which I sent to all local authorities. However, given the genesis of the 2013 advice, I felt that it should also go on the Scottish Government website and, to avoid confusion, I asked for it to replace the 2013 advice.

I trust this assists you in your deliberations but if you have any further questions then please do not hesitate to contact me again.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ken Macdonald', with a long horizontal flourish extending to the right.

**Dr Ken Macdonald**  
**Head of ICO Regions**