

23 April 2018**Agenda Item: 7****REPORT OF SERVICE DIRECTOR – FINANCE, PROCUREMENT &
IMPROVEMENT****GENERAL DATA PROTECTION REGULATION (GDPR), IMPLICATIONS FOR
CONTRACTS****Purpose of the Report**

1. To provide members with assurance of work underway with regard to the General Data Protection Regulation (GDPR) which comes into force on 25th May 2018, and compliance of NCC's personal data processors, throughout our contractual arrangements.

Information

2. The legislation responds to the digital age and strengthens the control and rights that citizens have over their own personal data. The new law places increased information governance and data protection obligations on the Council (and other data controlling / processing organisations). It also introduces significantly higher penalties for worst case personal data breaches and failure to evidence compliance with the law (maximum fines of up to £17m).
3. On 19 December 2017, Crown Commercial Service (CCS) published the Procurement Policy Note/Action Note PPN 03/17 on Changes to Data Protection Legislation and General Data Protection Regulation (GDPR). This Policy Note is a guide for government departments and non-governmental public bodies in respect of their role as Data Controllers (organisations which determine the purpose and means of personal data processing) and their relationship with Data Processors (organisations which process personal data on behalf of a Controller).
4. Data Processors must comply with the legislation and can be fined by the Information Commissioners Office (ICO) for non-compliance. This has been done to ensure better performance and enhanced protection for personal data, in addition Crown Commercial Service has advised Controllers not to indemnify their processors against penalties incurred.
5. Both Controllers and Processors can face claims for compensation where they have not complied with their obligations under GDPR.

Approach to Council Data Processors for existing contracts

6. The Crown Commercial Service guidance advises governmental bodies to ensure that their data processors are implementing appropriate technical and organisational measures to meet GDPR and can demonstrate compliance.
7. Specific guidance has been given to all governmental bodies regarding actions that need to be undertaken with both existing and future contracts with suppliers. The actions detailed below are being taken forward for those contracts awarded prior to 25/5/2018 but that will be live post that date;
 - Identification of all contracts which involve the processing of personal data and will be live post 25/5/2018. The Corporate Procurement Unit (CPU) has undertaken a review of all contracts with risk ratings assigned based on volumes; types of processing (ie. Special Category, including sensitive data); contract duration etc.
 - Notification to all those identified suppliers (starting with the highest risk) of the changes to data protection legislation and the requirement to amend those contracts appropriately. The Corporate Procurement Unit (CPU) has started the process of writing to all contracted suppliers to advise that we will be amending contracts, with updated contract specifications and service delivery schedules.
 - Amendment of contracts to accommodate the new GDPR legislation will commence in the coming weeks, contract variations will be developed alongside legal services and commissioning colleagues to ensure the accuracy of contract details.
 - Conduct due diligence, it is proposed that this is met by a follow-up letter (3 months after contract variation) to confirm obligations are being met. On-going due diligence of data protection compliance would need to form part of overall contract management arrangements (including internal audit provisions etc).

Approach to Council Data Processors for New Contracts

8. In addition to the above, specific guidance has also been given for new contracts awarded on/after 25/5/2018:
 - Pre-procurement dialogue must include GDPR information to ensure that potential bidders are aware of their obligations. The Corporate Procurement Unit is already undertaking this work.
 - Ensure that potential future contractors can meet the requirements of GDPR prior to the award of any new contract. A questionnaire has been designed and embedded (following Information Commissioner's Office recommendations) into the Authority's tendering processes and is being used as required.

Risks Associated with the Changes to Data Protection Legislation

9. There are risks associated with the new change in legislation which the Corporate Procurement Unit and legal services aim to minimise, these risks are identified as;
 - There will be a cost for administering contract variations for procurement, legal services and commissioners due to the time required to review, amend and monitor change.

- Internal capacity within Information Governance and Legal Services to deal with large volumes of Data Protection queries / guidance from suppliers as well as inputting into the procurement exercise is limited. However an Interim Data Protection lawyer commenced work on 22/1/18 and will provide additional expertise. Further support from external providers can also be called upon if required.
- There is a need to identify key contract managers and ensure that they have the right training and support.

Statutory and Policy Implications

10. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Recommendation:

- 1). That Members support the approach to contacting contracted suppliers and varying their Contracts.

Nigel Stevenson

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For any enquiries about this report please contact:

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Constitutional Comments (KK 09.04.2018)

11. The proposal in this report is within the remit of the Finance and Major Contracts Management Committee.

Financial Comments (SS 09.04.2018)

12. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

13. Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All