



Report of: Borough Solicitor

Relevant Portfolio Holder: Councillor I Moran

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SUBJECT: GENERAL DATA PROTECTION REGULATION

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To inform Cabinet of the forthcoming General Data Protection Regulation (GDPR) and seek support for necessary actions and resources to ensure compliance with requirements.

2.0 RECOMMENDATIONS

2.1 The report be noted.

2.2 That the necessary actions being taken to achieve compliance with the General Data Protection Regulation and continuing to ensure the Council maintains high standards in the processing of personal data be supported.

2.3 That a budget of £15,000 be provided to support compliance with GDPR from underspends in the current year (up to 31 March 2018) to meet the resource requirements set out at paragraph 6 of the report and it be recommended that Council give further consideration to the additional resources for 2018/19 and beyond through the budget setting process.

2.4 That the Borough Solicitor be authorised to designate a Data Protection Officer.

2.5 That call In is not appropriate for this item as this matter is one where urgent action is required as early progress needs to be made to ensure services are prepared for the impending deadline for implementation of GDPR notwithstanding delays in issue of legislation and guidance.

3.0 BACKGROUND

- 3.1 Protection of personal data in the UK is governed by the Data Protection Act 1998 (DPA). On 25 May 2018 the GDPR will come into effect replacing the DPA. GDPR is EU based law and is proposed to be supplemented by an Act of Parliament which is currently at Bill stage. Once enacted the Bill will fill gaps or provide additional detail where this is permitted on a national footing by the EU led legislation. At this stage the Bill is only approximately half way through its progress toward becoming an Act of Parliament. Government has made clear that GDPR will apply within the UK in the event of a Brexit arrangement and organisations will have to work to be compliant with GDPR ahead of the deadline of 25 May 2018.
- 3.2 Since the DPA came into force, there have been changes in the way organisations deal with and process personal data. As Members will be aware the move is increasingly to a digital handling of information, including personal data, and the Council seeks to further enhance such arrangements through its digital inclusion strategy. In addition residents and partner organisations work increasingly through electronic means, including arrangements for secure sharing of personal data with a view to improving services and outcomes for residents. Effective management of personal data that is compliant with the DPA has become a normal part of Council processes, systems and behaviours. These are formalised and secured through the Council's Data Protection Policy which is subject to regular review.
- 3.3 GDPR acknowledges changes in processing of personal data and seeks to provide a more modern framework for this. It aims at increasing the safeguards provided to individuals and improving their rights to access their personal data. Organisations that fail to comply with personal data handling requirements could face significant financial penalties.
- 3.4 One of the most significant differences between the current regime and that to be provided under GDPR is the new requirement to report all data breaches which result in a risk to the rights and freedoms of individuals. As result of breaches being reported the Information Commissioner can issue fines of a level up to 4% of turnover or 20 million Euros. This presents a substantial increase to the current powers of the Information Commissioner, who currently may issue fines up to the level of £500,000. At present only a very small number of reported incidents result in fines being issued. This change to the legislation may result in a greater number of fines being issued at a higher financial penalty level. The Information Commissioner has indicated an intent to encourage compliance by training and information provision: more carrot than stick.
- 3.5 The handling of the revised arrangements is a significant ask at a time of lean resources and challenging budgetary issues. This is a position faced also in other local authorities (and relevant organisations) across the UK.

4.0 PROPOSALS

- 4.1 The Council already has in place measures to assist in demonstrating compliance with the current data protection regime. These will need to be improved upon to demonstrate delivery of the revised requirements under GDPR. In addition, there are many GDPR changes which go beyond the current scope of the DPA, providing new areas of regulation and requiring procedures etc, to be revisited and upgraded across the Council's services. Given the multitude of functions undertaken by the Council and the different ways in which personal data is processed, e.g. collected and stored, this means the undertaking of this work will be complex and potentially extensive. Suitable training arrangements need to be in place to promote the changes to enable staff to be supported in securing compliance.
- 4.2 Officers are working towards compliance in a number of areas. At Appendix 1 to the report there is a non-exhaustive High Level Action Plan (indicative) of the new requirements under GDPR with summary notes. Through the Council's Data Protection Policy there is in place an Officer Working Group, which is backed by arrangements within all services to provide an Information Asset Owner and Data Protection Link Officer, providing a suitable network for dissemination of information and providing hands-on "local" support to the process for changes to procedures. As noted above training arrangements are being made to highlight relevant changes to staff on a corporate basis.
- 4.3 GDPR will inevitably impact upon most if not all Council services and systems. In order to manage the programme effectively additional resources are required.
- 4.4 GDPR requires the Council to have in place a designated Data Protection Officer (DPO), setting specific requirements for the role within the relevant legislation and associated guidance. A summary of the role from the GDPR is provided at Appendix 2. Here the DPO will act to assist by providing guidance and advice to Information Asset Owners and Link Officers in Council services ensuring a co-ordinated approach, in addition to meeting the formal requirements of the DPO. Changes are being made within the establishment under delegated arrangements to allow an Assistant Solicitor role to be adapted to meet the requirements of this post (subject to job evaluation). Arrangements will have to be further developed to allow a protocol for the role, adding further clarity to the particular requirements and recognising the statutory protection given to this officer in exercising the DPO role. A delegation is sought to enable the Borough Solicitor to designate an officer/resource to the role of DPO.
- 4.5 At this stage it is difficult to quantify the exact costs associated with compliance. Work may be required with systems providers and the DPO will need to work alongside services to undertake a detailed interrogation of processes to assess the extent of change required. It is to be appreciated that this challenge is one that is faced by all local authorities and whilst it is expected that much of this work may be accommodated within existing budgets and resources, additional significant resource implications may arise as the process is taken forward. Any resources that are to be sought will be taken through the usual Council procedures for decisions in relation to such matters.
- 4.6 As Councillors are also subject to the data protection regulation they will similarly be expected to comply with GDPR once in place. Thus, for example, where information is held by Councillors on behalf of constituents, as a result perhaps of

handling issues faced by residents, they will need to be aware of requirements. For this reason training will be also made available to Councillors.

- 4.7 Councillors may also see changes in the way in which information is presented in reports to Committees etc., e.g. the inclusion of data protection impact assessments where changes to systems and processes are involved in a decision they are asked to consider.
- 4.8 Officers are engaging with colleagues in other local authorities to facilitate a coordination of resources, thereby reducing duplication of efforts. A Lancashire based group has been established for this purpose.
- 4.9 The improvements to processing of data will have a long term positive effect on the business efficiency of the Council, e.g. by improving processes and ensuring only relevant data is held for the functions the Council carries out and, conversely, redundant personal data is not retained, thus assisting with handling requests to access personal data.

5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 5.1 There are no significant sustainability implications associated with this report and, in particular, no significant impact on crime and disorder.

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 6.1 There are financial and resource implications arising from this report in respect of arrangements proposed and some comment has been provided in the report (above).
- 6.2 In order to provide capacity for the Assistant Solicitor to assist the process of GDPR implementation and undertake the DPO role some backfilling of the current role needs to be put in place. It is proposed that underspends in the Legal and Democratic Services budget for the year 2017/18 provide a sum of £10K (see below also need to meet full-year cost) to allow backfilling to cover the regular duties undertaken in that post. This is proposed to be applied to appoint a trainee solicitor on a secondment arrangement for a fixed term, e.g. with a local solicitors firm, or a fixed term legal apprentice post (for one year at Scale 5, subject to job evaluation and the budgetary approval by Council) and, pending putting in place those arrangements, allow services to be maintained with a blended arrangement providing capacity by allowing additional staff time, overtime or outsourcing of items of work as appropriate, having regard to best value. The trainee solicitor or apprentice arrangement would only be able to go forward subject to Council approval of the balance of funding (see 6.3)
- 6.3 For the year 2018/19 it is anticipated there will be a significant need for central co-ordination of arrangements up to and beyond the implementation of GDPR. It is proposed that a budget bid be put forward to February Council seeking funds to backfill for a longer period with a secondment at Trainee Solicitor level or legal apprentice (both arrangements with on-costs and for a term not to exceed one year in total, as at 6.2 above), up to the end of the 2018 financial year, at a level of £29K. In addition to this there is an ongoing need for training, see paragraph 6.4.

- 6.4 There is no current specific budget to meet training requirements in relation to data protection. There is an identified corporate need which will require officers to be suitably trained to undertake their roles, including development of their own processes in service to ensure continued compliance notwithstanding the changes brought about by GDPR. A corporate training budget to allow such training to be undertaken in-house via the Emerge software system is suggested and a sum of £5K is proposed for this purpose in the current year (sourced from underspends). This will enable staff to be trained in a more flexible manner, e.g. at the desk or remotely, and for a suitable training record to be maintained. For future years there will be a need for continuing training and this can be set at a lower level of £3K, which assumes data protection arrangements are by then more settled. Bespoke training for particular roles within services will continue to be undertaken as required, within usual service budgets.
- 6.5 For the DPO role it is necessary to have in place a programme of training to ensure continued expertise in order to deliver requirements as they change over time. A budget of £500 per annum is proposed in this regard, to form part of the budget bid referred to above. It is to be noted that the GDPR requires the DPO role must be appropriately resourced to allow the tasks necessary to carry out the role.
- 6.6 The arrangements for payment of fees to the Information Commissioner are to be revised and, subject to confirmation in regulations, this is likely to be in the order of £1000 each year for the Council. This is an increase on the current year's cost of £500.

7.0 RISK ASSESSMENT

- 7.1 Meeting GDPR is a legal requirement which must be complied with. Failure to meet requirements could result in significant financial penalties being applied by the ICO. There is an opportunity to ensure that better regulated use of data in accordance with the requirements of GDPR will have business efficiency benefits as well as assisting residents in understanding the handling of their personal data.
- 7.2 A Key Risk register entry is on place in relation to this item. This acknowledges that there may be a need for additional resources in services as a result of the changes made by GDPR.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

1. High Level Action Plan (indicative)
2. Data Protection Officer Role – Summary