

Agenda Item: 14.6
Report to: Full Council
Date: Wednesday 17th June 2020
Subject: Parish Councils – Data Protection Officer
Summary: To appoint a Data Protection Officer

Decisions Required:

1. To consider appointing a Data Protection Officer of the council

1. Background

In September 2018 the clerk presented the following information in a report to the full council to consider appointing a Data Protection Officer:

Section 7(3) of the DPA 2018 says that parish councils in England are not public authorities for the purposes of the GDPR.

As Kings Hill Parish Council is not a public authority for the purposes of the GDPR then it does not need to appoint a DPO¹.

Regardless of whether the GDPR obliges you to appoint a DPO, KHPC is still subject to data protection legislation and it must ensure that it has sufficient staff and resources to discharge obligations under the GDPR.

2. KALC Advice

On 9 May 2018, MPs accepted the government's amendment to exempt all parish and town councils and parish meetings in England from the requirement to appoint a Data Protection Officer (DPO) under the GDPR. It now goes back to the House of Lords to consider the amendments made during the House of Commons stages, though the amendment is not expected to be reversed. If it does get voted through, then appointing a DPO to support the Council's approach to data protection would be discretionary and may be regarded as good practice. However, all the other GDPR requirements would still apply.

Clerks and RFOs cannot be designated as a council's DPO. This is because although they may satisfy some requirements of the DPO job, they will not satisfy all of them. There can also be a conflict of interest between

¹ Information Commissioners Office

the role of a clerk and RFO and that of a DPO and these types of conflicts should be avoided².

3. What happens if there is a breach

Under the GDPR, Councils are required to report a personal data breach that meets the reporting criteria, within 72 hours to the Information Commissioner, in some cases data subjects will have to be notified too. In line with the accountability requirements, all data breaches must be recorded along with details of actions taken. Councils should ensure that there is a person, or a group of people, who are responsible for dealing with any data breaches which may occur, outline a response plan and set out a procedure detailing how, when and to whom data subjects should report data breaches.

Aside from or in place of a DPO, the council may wish to appoint a staff member who is able to provide central support and guidance in respect of compliance with data protection legislation. The job title 'Data Protection Compliance Officer' or similar, rather than 'Data Protection Officer' ought to be used, to avoid confusion with the DPO (if there is one), to which specific responsibilities are attached under the legislation³.

4. Decision Taken

- FC18/166.** To receive report on appointing an external Data Protection Officer and agree actions
After discussion it was **RESOLVED** not to appoint an external Data Protection Officer at this time.
- FC18/167.** It was **AGREED** that the clerk would undertake investigations into appointing an external compliance officer and report back to Full Council at the meeting in November 2018.

At the November 2018 meeting a report on appointing an external compliance officer was received and the following decision taken:

- FC18/168.** To receive report on appointing an external Data Protection Officer and agree actions.
An update was received and advice given that an external data protection officer is not needed. It was **RESOLVED** to confirm what the policy and plan would be if there were a data breach.

At the December 2018 meeting the data breach details were received and the following decision was taken:

² NALC GDPR Toolkit – August 2018

³ NALC GDPR Toolkit – August 2018

FC18/169. To note the clerk's role in regard to data protection compliance.

The report was received and the procedure for a data breach was **noted**.

No further action was taken on appointing a Data Protection Officer.

5. Implications

Since the council took its decisions to change the policies at the Sports Park it has received several Freedom of Information Act requests and a Data Subject Access request. The council does not have a Data Protection Officer in place and the officers of the council have been preparing and reviewing these requests. This has several implications to the council including; disrupting the usual business of the council; increased workload; and risk of unintentional errors due to the roles of officers not requiring this depth of formal Data Protection training.

6. Recommendations

The council is recommended to consider appointing an external Data Protection Officer⁴ to ensure that any data requests are dealt with in a timely, compliant manner by a trained professional. This will ensure that the council minimises the risks that are involved in dealing with handling data.

7. Financial Implications

The parish council has a professional fees budget of £4000 of which £992 has already been spent. Funds committed in this budget: £700 year end close down; Lease changes for Sports Park and Community Centre c£1500 this leaves £808 in the budget.

8. Kent Association of Local Councils Training

At the GDPR training provided by KALC, a DPO provider 'Satswana' delivered a variety of training to councillors and clerks and offered a service to parish and town councils to meet the requirements of Data Protection law. The costs of this service is being obtained and will be provided in a separate procurement document with details of other quotes for the council to consider a suitable provider.

Decision required:

To consider appointing a Data Protection Officer

Contact Officer: Julie Miller, Clerk
Date: 11th June 2020

⁴ Local Government Act 1972 s111