

Children's Social Care Services Consultation Response Team
Room A3.5 Castle Buildings
Stormont Estate
BELFAST
BT4 3SQ

01 December 2023

By email only: cscsreviewconsultation@health-ni.gov.uk

Dear Sir/Madam,

RE: Public Consultation on the Recommendations from the Independent Review of Children's Social Care Services

The ICO welcomes the opportunity to respond to the above consultation. This Office has responsibility for promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the UK Data Protection Act 2018 (DPA 2018) and additional information rights legislation.

We note that the purpose of this consultation is to seek views on the majority of the recommendations from the report on the Independent Review of Children's Social Care Services in Northern Ireland, conducted by Professor Ray Jones. The review made 53 recommendations that are primarily for the Department of Health (DoH) and the Health and Social Care (HSC) sector.

Please note that many of the themes/questions included in the consultation fall outside of the scope of the Information Commissioner's regulatory role. For this reason, the following comments are focused solely on the information rights elements of the documentation.

Article 36(4) – Statutory Consultation on Legislative Measures

The review recommends (Recommendations 7 and 38) that a new regional Children and Families Arm's-Length Body (ALB) of the DoH should be established, with sole responsibility for children's services to replace the current model of delivery through the HSC Trusts. Presumably, this would also involve a change in data controllership for social care services in Northern Ireland. It has been proposed that the ALB will have a range of responsibilities including developing its own quality assurance and development processes (Recommendation 45).

In addition to this, we also note that the review has recommended the following:

- Establish a children and families social care division in DoH (Recommendation 15);
- Develop mandatory integrated multi-agency services (Recommendation 18);
- Expand respite care for children with a disability and with children receiving respite care not seen as looked after children, and extend the transition period where appropriate and necessary for young people moving to adult services (Recommendations 30 and 31);
- Implement the major recommendations of the Gillen Review of the family courts (Recommendation 34);
- Appoint a Minister for Children and Families (Recommendation 39); and
- Develop emotional health and well-being services separate from clinical CAMHS services (Recommendation 42).

Further to this, whilst it is not a recommendation, the review also reflects and considers the need to move the registration and inspection functions of early years providers from the Trusts to what is seen as more appropriate statutory bodies¹.

On the basis that the above recommendations will likely either require primary legislation or amendment of existing legislation, we would like to draw your attention to your obligations under Article 36(4) of the UK GDPR.

Article 36(4) imposes a requirement on Government Departments and relevant public sector bodies to consult with the ICO when developing policy proposals relating to the processing of personal data. Article 36(4) states that: *"The relevant authority must consult the Commissioner during the preparation of a proposal for a legislative measure to be adopted by Parliament, the National Assembly for Wales, the Scottish Parliament or the Northern Ireland Assembly, or of a regulatory measure based on such a legislative measure, which relates to processing."*

Consultation with the ICO under Article 36(4) is a separate process to any wider public consultation such as this one. Such prior consultation is deemed necessary to ensure compliance with the UK GDPR and to mitigate the risks involved for the data subjects affected by the proposals.

Should any policy decisions be taken on foot of this consultation that will result in new legislation or amendment to existing legislation relating to

¹ The Regulation and Quality Improvement Authority (RQIA) and the Education and Training Inspectorate (ETI) were referenced here.

personal data, the [Article 36\(4\) Enquiry Form](#) (set out at [Annex A of the guidance](#)) will need to be completed by the relevant policy lead, in consultation with their Data Protection Officer (DPO). It is imperative that this Form is completed and sent to the ICO *early* in the policy making process. This is to provide us with sufficient time to review the proposals and assess whether we want to engage formally with the DoH on the proposals under 36(4). Should you have any questions about the Article 36(4) consultation process, please do not hesitate to contact our office to discuss this further.

General Data Protection Considerations

We have set out below some data protection considerations arising from the current consultation that we would like to draw to your attention at this stage. It is likely that the areas below can be explored further with DoH as part of the Article 36(4) consultation and engagement process.

Data Protection by Design and Default

A fundamental concept of data protection law is that data protection should be built into any project or proposals using personal data from the earliest stages of planning. As such, we would like to remind DoH of their obligations under [data protection by design and default](#) when implementing the review's findings.

It is important to note that a key aspect of these obligations involves considering whether there is a need to carry out a [Data Protection Impact Assessment \(DPIA\)](#) and seeking expert advice from your [DPO](#).

Staff Recruitment and Training

Under Recommendation 3, the review states that "*action needs to be taken to address the children's social care workforce crisis*". Related recommendations indicate that action needs to be taken to address staff shortages and retention (Recommendations 8 and 11).

Further to this, it is also recommended that a trainee social worker programme should be introduced (Recommendation 20) alongside enhanced post-qualifying development programmes and qualifications for social workers (Recommendation 21).

Due to the highly sensitive information that social workers typically deal with, it is important that any induction training and post-qualifying programmes include appropriate data protection training for social work staff, which is reviewed at regular intervals.

Accountability and Governance

The review states that any *"future arrangements should allow the leaders of statutory children's social services to focus on the services without the allocation of other roles and responsibilities"*.

Elsewhere the review discusses the *"administrative burden"* of carrying out detailed recordings such as preparing and submitting reports which requires *"time which might otherwise be deployed on direct work with children and families"*. The review recommends that there is a *"review and rethink about the role of social workers so that it is not dominated and overwhelmed by a focus on risk assessment and risk management"*.

It is important that this review and rethink does not detract from the legal requirements pertaining to documentation under data protection legislation, such as carrying out a [DPIA](#), as well as the obligations outlined under the [accountability principle](#) of the UK GDPR and the importance of [good governance](#).

Of course, there may be circumstances within social work settings where an individual needs to share information urgently and/or in an emergency in order to safeguard a child. In such cases, individuals should not hesitate to share the information that is necessary to safeguard a child and may not be able to follow all the usual processes in doing so. However, there should be a process in place to enable them to make a record of what information was shared, who with, and why, as soon as possible.

Data Sharing

The review states that multi-professional and multi-agency teams and services to support children and families should be developed and deployed (Recommendation 16), and that this should be mandated and supported by The Executive Office (TEO) and DoH (Recommendation 18). Furthermore, Recommendation 27 notes that there should be a *"region-wide introduction of the Mockingbird Model"*.²

It is important to note that such recommendations may result in new data sharing arrangements.

² It is our understanding that the Mockingbird Model involves foster carers being part of a group with other foster carers who are described as satellite foster homes. They are supported by a central 'hub' home, which provides resources and support to the satellite homes.

Data protection law enables organisations to share personal data when it is done securely, fairly and proportionately. As such, multi-agency teams and Mockingbird foster homes engaging in new data sharing should bear in mind the ICO's [Data Sharing Code of Practice](#), which goes into more detail on the steps that organisations need to take to share data, while protecting people's privacy.

In addition, as any potential new data sharing arrangements will involve children's data, all organisations involved in the arrangement should refer to our [child safeguarding guidance](#) in cases where information needs to be shared for safeguarding purposes.

Quality Assurance and Development Processes

Recommendation 45 indicates that the regional ALB should "*develop its own quality assurance and development processes and with independent participation within the processes*". The review states that this should include case auditing, data collection and reporting, and that it should capture the overall picture but also drill down into practice.

Based on the above, this would likely involve the collection of sensitive information. As such, it is important that the ALB takes account of [Article 5\(1\)\(c\)](#) of the UK GDPR which states that data processing should be adequate, relevant and limited to what is necessary. This means that only personal data which is necessary and proportionate for the intended purpose should be processed. This will be of particular importance when it comes to conducting case audits of children's services.

Furthermore, if the intention is for the ALB to publish such reports, then consideration should also be given to the use of [privacy enhancing techniques](#) that will help mitigate any risks to personal data such as anonymisation, pseudonymisation and [privacy enhancing technologies](#).

Data Migration

Recommendation 40 of the review states that a regional care and justice centre should be created through the amalgamation of the Woodlands Juvenile Justice Centre and the Lakewood Centre for Young People. This proposal would bring together the services and functions of both centres into one site.

As this recommendation may require the migration/amalgamation of records, there are a number of considerations that would need to be taken by those involved in such an exercise.

For example, prior to any migration/amalgamation, it will be important for the organisations involved to consider how this will work, identify what data needs to be migrated, ensure transparency with service users whose data will be transferred as part of the migration/amalgamation, as well as identifying and mitigating the risks to those individuals and their personal information. As such, consideration should be given as to whether a [DPIA](#) is required to help identify and minimise the data protection risks of such an amalgamation.

Children's Social Care Strategic Reform Programme Board

We note that a Children's Social Care Strategic Reform Programme Board has been established and has been meeting since April 2023. If not already the case, we would encourage there to be information governance (IG) representation on this Programme Board, such as the DPOs from the DoH and HSC Trusts. The early involvement and participation of DPOs in a programme such as this will be vital to its success, as they will be able to advise on the data protection risks and how to manage them. If the Board would benefit from ICO attending one of the Programme Board meetings, we would be happy to do so.

Conclusion

We hope you find the above comments helpful and we look forward to engaging with you further on these proposals as they develop. Should you have any queries in relation to the advice above or the Article 36(4) process, please do not hesitate to contact me.