



## **PENRITH TOWN COUNCIL**

Unit 1, Church House, 19-24 Friargate, Penrith, Cumbria, CA11 7XR  
Tel: 01768 899773 Email: townclerk@penrithtowncouncil.co.uk

DATE: 5 December 2017

Dear Councillor

You are hereby summoned to attend a meeting of the:

### **FINANCE COMMITTEE**

to be held on:

Monday 11 December 2017 2.00 pm – 3.00 pm, Board Room, Penrith  
Town Council Office, Church House.

Budget Review and 17-18 Budget Preparation - The Budget Task and  
Finish Group will meet informally after the meeting: Informal agenda and  
draft budget to follow.

Mrs V. Tunnadine

### **TOWN CLERK**

*(Please Note: Under the Openness of Local Government Bodies Regulations 2014 this meeting has  
been advertised as a public meeting and as such could be filmed or  
recorded by broadcasters, the media or members of the public)*

When it is proposed to consider the following business: -

# **PENRITH TOWN COUNCIL**

## **AGENDA FINANCE COMMITTEE 13 November 2017**

Monday 11 December 2017 2.00 pm – 3.00 pm, Board Room,  
Penrith Town Council Office, Church House.

### **1. Apologies for absence**

To receive apologies from members.

### **2. Declaration of interests and dispensations**

Members will be asked to disclose their interests in matters to be discussed and to decide requests for dispensations.

### **3. Minutes of the previous meeting**

- a) To authorise the Chairman to sign the Minutes of the Meeting of the Finance Committee held on Monday 9 October 2017 as a true record.
- b) To note the draft minutes of the Staffing Sub-Committee held on 7 November 2017.

### **4. Public participation**

Members of the public, who have requested in writing to speak prior to the meeting, are invited to speak on matters related to the agenda for up to three minutes.

### **5. Public bodies (admission to meetings) act 1960**

To consider whether any items should be considered without the presence of the press and public, pursuant to the Public Bodies (Admission to Meetings) Act 1960 Section 2 as the discussions related to this matter will consider the terms of a contract.

### **6. Payments for approval**

- a) To note that all members received prior to the meeting, a copy of the payments schedule for the payment period, every invoice and that all members have verified that each payment aligns with the invoices.
- b) To consider and approve the payments schedule.
- c) To consider and approve the Lloyds Bank reconciliations.
- d) To note that two signatories will authorise payments after the meeting

### **7. HSBC Bank account**

To receive an oral update on the progress of opening a bank account with Penrith branch of HSBC and electronic banking.

### **8. External Auditor Appointment and Fees**

To note the correspondence received from the Smaller Authorities' Audit Appointments Limited.

### **9. Data Protection**

To consider the report and the recommendations contained within, regarding the appointment of a Data Protection Officer and the requirement to carry out a cyber security audit.

## **10. Bring Site**

- a) To consider correspondence from Eden District Council.
- b) To consider and approve the risk assessment

## **11. Next meeting**

To close the meeting and to note that the next Finance Committee Meeting will be held Monday 15 January 2018 at 2.00pm in the Board Room, Penrith Town Council Office, Church House.

**For the Attention:** All members of the Penrith Town Council Finance Committee:

Cllr. Kenyon	<b>Chairman</b>
Cllr. Burgin	<b>Vice Chairman</b>
Cllr, Baker	
Cllr. Connelly	
Cllr. Jackson	
Cllr. Whipp	

**For Information only:** All other members of the Penrith Town Council

### **Councillors**

Cllr. Clark  
Cllr. Graham  
Cllr. Lawson  
Cllr. Monk  
Cllr. Thompson



## **PENRITH TOWN COUNCIL**

Unit 1, Church House, 19-24 Friargate, Penrith, Cumbria, CA11 7XR  
Tel: 01768 899773 Email: townclerk@penrithtowncouncil.co.uk

Minutes of the meeting of the:

### **DRAFT FINANCE COMMITTEE**

#### **Held on:**

Monday 13 November 2017 2.00 pm – 3.00 pm, Board Room, Penrith Town Council Office, Church House.

#### **PRESENT:**

Cllr. Burgin                      **Vice Chairman**

Cllr, Baker

Cllr. Jackson

Cllr. Whipp

Town Clerk

# **DRAFT MINUTES FINANCE COMMITTEE**

**13 NOVEMBER 2017**

## **FIN.COM.17/41 Apologies for absence**

Apologies were received from members:  
Cllr. Kenyon and Cllr. Connelly.

## **FIN.COM 17/42 Declaration of interests and dispensations**

Members were asked to disclose their interests in matters to be discussed and to decide requests for dispensations. None received.

## **FIN.COM 17/43 Minutes of the previous meeting**

Members authorised the Chairman to sign the Minutes of the Meeting of the Finance Committee held on Monday 9 October 2017 as a true record. None received.

## **FIN.COM. 17/44 Public participation**

No members of the public, had requested in writing to speak prior to the meeting, are invited to speak on matters related to the agenda for up to three minutes.

## **FIN.COM. 17/45 Public bodies (admission to meetings) act 1960**

Members considered whether item 9 should be considered without the presence of the press and public, pursuant to the Public Bodies (Admission to Meetings) Act 1960 Section 2 as the discussions related to this matter will consider the terms of a contract.

Members considered whether item 11, a late agenda item which recorded the Staff Sub-Committee's recommendations for staff recruitment and staff pay should be considered without the presence of the press and public, pursuant to the Public Bodies (Admission to Meetings) Act 1960 Section 2 as the discussions related to confidential personnel data.

## **RESOLVED THAT:**

Items 9 and 11 be considered without the presence of the press and public.

## **FIN.COM. 17/46 Payments for approval**

- i. Members noted that:
  - a) All members received prior to the meeting, a copy of the payments schedule for the payment period, every invoice and that all members have verified that each payment aligns with the invoices.
  - b) Two signatories would authorise payments after the meeting
- ii Members considered the record of decisions taken pursuant to delegated powers report and recommendation contained within.

## **RESOLVED THAT:**

The decision be approved.

### **FIN.COM. 17/47 Second Quarter Report and Bank Reconciliation**

Members were asked to consider and approve the second quarter finance report and bank reconciliation.

#### **RESOLVED THAT:**

- I. The second quarter report be approved.
- II. That the bank reconciliations be approved

### **FIN.COM. 17/48 Council Plan – Six Month Review**

Members noted the six- month review of the Council Plan.

#### **RESOLVED THAT:**

The activities recorded in the Council Plan and Work Plan that are core Council business and audited internally and externally should be removed from the plan to allow the plan to focus on business related to issues/projects/initiatives.

### **PART TWO ITEMS**

#### **FIN.COM. 17/49 Bring Site**

Members considered the report and correspondence from Eden District Council and the original agreement.

Members had visited the site and raised concerns over fly tipping waste, litter that arose from the removal of the recycling bins and bins not being emptied and waste overflowing from the bins.

#### **RESOLVED THAT:**

- I. A risk assessment be completed.
- II. Clarification is sought from EDC to ascertain:
  - The frequency of emptying for all bins including the charity bins.
  - Who is responsible if waste has been displaced because of bin removal/emptying?
  - Who is responsible if waste has been displaced because of overflowing waste from bins that are full?
  - Who is responsible for clearing fly-tipping?
  - Confirmation that the Town Councils responsibility is solely for picking up waste that has been accidentally dropped by the users of the site.

## **FIN.COM.17/50 Late item – Staff Pay and Recruitment**

Members considered the recommendations from the Staff Sub-Committee meeting held on 7 November 2017 regarding Staff Structure and Pay. Confidential minutes of in detail pay awards recorded on pink minutes.

### **RESOLVED THAT:**

- I. That the pay recommendations for all existing staff excluding the Town Clerk be approved.
- II. That the Town Clerks salary go forward to Full Council for approval in January as part of the precept meeting and discussion.
- III. That the recruitment for the new internal posts be approved as recommended by the Staff Sub-Committee and start dates were agreed as:
  - Operations Manager – Early 2018
  - RFO – June 2018

## **FIN.COM. 17/51 Next meeting**

Members noted that the next Finance Committee Meeting would be held Monday 11 December 2017 in the Board Room, Penrith Town Council Office, Church House.

**CHAIRMAN:**

**DATE:**

DRAFT - STAFF SUB-COMMITTEE MINUTES – MADE AVAILABLE IN HARD COPY TO MEMBERS

# PENRITH TOWN COUNCIL

## FINANCE COMMITTEE 12 DECEMBER 2017

- Item:**
- a) Appointment of External Auditor**
  - b) Scale of Audit Fees**

**Lead Officer:** Town Clerk

**Lead Committee:** Finance

### **Notification of external auditor appointments for the 2017/18 financial year** **Penrith Town Council**

Dear Chair/Clerk/RFO,

Under powers set out in Regulation 3 of the Local Audit (Smaller Authorities) Regulations 2015, Smaller Authorities Audit Appointments Ltd (SAIA) was appointed by the Secretary of State for Communities and Local Government as "a person specified to appoint local auditors" and as the Sector Led Body (SLB) for smaller authorities. Smaller authorities are those whose gross annual income or expenditure is less than £6.5 million.

Under the Regulations, SAAA is responsible for appointing external auditors to all applicable opted-in smaller authorities, for setting the terms of appointment for limited assurance reviews and for managing the contracts with the appointed audit firms.

During 2016 various communications outlined that smaller authorities would be 'opted-in' to the new central procurement regime managed by SAAA unless they expressly decided to 'opt-out' and correctly followed the various procedures required under statute to appoint their own external auditors.

Your authority is opted-in to the central procurement process and therefore an external auditor has been appointed for your authority for the 5 year period commencing with the financial year 2017/18. The contact details of your appointed external auditor and fee scales are shown in the appendix, and can also be found on our website.

The approach applied to making these appointments was described last year on the SAAA website at <http://www.localaudits.co.uk/appts.html>. The approach follows the established practice of grouping auditor appointments for Town and Parish Councils by county area. Drainage Authorities and other bodies all have the same audit firm appointed. The audit firms all have previous experience of



conducting limited assurance reviews for smaller bodies and have dedicated personnel to support communications.

SAAA will monitor the performance of the appointed firms in providing limited assurance audit services in terms of quality and compliance with their statutory terms of appointment.

If your authority has any potential conflict of interest relating to the auditor appointment, for instance if a Councillor, or close relation is employed by the appointed auditor, you should advise SAAA immediately.

## **Exempt authorities**

There are various changes to the legislation taking effect from 2017/18, most notably the potential for authorities where the higher of income or expenditure for the year was £25,000 or less, to declare themselves as 'exempt' from a limited assurance review by an external auditor if they meet certain qualifying criteria.

However, all authorities, even if they declare themselves 'exempt', will still need to fully complete and publish an annual return and must still have a named appointed auditor to deal with questions or objections from local electors about the accounts. Opted in authorities have already had an auditor appointed for them by SAAA.

## **The Annual Return**

The Annual Return will now be known as the "Annual Governance and Accountability Return" and will need to be completed in accordance "proper practices" as set out in '*Governance and Accountability for Smaller Authorities in England, a Practitioners' Guide*', and then be published in accordance with the applicable Transparency Codes.

The new, Annual Governance and Accountability Return forms will be sent out by your appointed auditor electronically at the end of the financial year. It is assumed that your authority is willing and able to accept documents electronically by e-mail unless you specifically advise SAAA to the contrary no later than 31 December 2017. The return can either be completed electronically or printed off and completed manually.

Advice and assistance is available from the various sector membership organisations, namely:

National Association of Local Councils and County Associations  
[www.nalc.gov.uk](http://www.nalc.gov.uk)

Society of Local Council Clerks [www.slcc.co.uk](http://www.slcc.co.uk)

Association of Drainage Authorities [www.ada.org.uk](http://www.ada.org.uk)

Yours faithfully,

**Smaller Authorities' Audit Appointments Ltd**

## Appendix

### Auditor appointments for smaller authorities for the five financial years from 2017/18 to 2021/22

On 30 November 2016 SAAA announced the conclusion of its procurement process and the award of limited assurance review contracts for five years to the successful external audit firms. Responsibilities under the new contracts will relate to accounts for the financial year beginning on 1 April 2017. Further details of the specific appointments by County area for opted-in authorities are detailed below.

#### Audit appointments by area for 20172022

<b>MAZARS LLP</b>		
Bedfordshire	Cleveland and Co. Durham	Staffordshire
<b>MOORE STEPHENS</b>		
Oxfordshire	West Sussex	
<b>PKF LITTLEJOHN LLP</b>		
Avon	Hampshire	Northamptonshire
Berkshire	Herefordshire	Northumberland and Tyne and Wear
Buckinghamshire	Hertfordshire	Nottinghamshire
Cambridgeshire	Humberside and East Riding of Yorkshire	Shropshire
Cheshire	Internal Drainage Boards	Somerset
Cornwall	Isle of Wight	South Yorkshire
Cumbria	Kent	Suffolk
Derbyshire	Lancashire, Greater Manchester and Merseyside	Surrey
Devon	Leicestershire	Warwickshire and West Midlands
Dorset	Lincolnshire	West Yorkshire
East Sussex	London	Wiltshire
Essex	Norfolk	Worcestershire
Gloucestershire	North Yorkshire	Other Scheduled Authorities

All auditor appointments are listed by contract (County) area above. Their contact details are shown below.

<b>APPOINTED AUDITORS CONTACT DETAILS</b>		
Mazars LLP Salvus House, Aykley Heads, Durham DH1 5TS	Moore Stephens (East Midlands) Rutland House, Minerva Business Park, Lynch Wood, Peterborough PE2 6PZ	PKF Littlejohn LLP SBA Team, 1 Westferry Circus, Canary Wharf, London E14 4HD
<a href="mailto:local.councils@mazars.co.uk">local.councils@mazars.co.uk</a>	<a href="mailto:east.midlands@moorestephens.com">east.midlands@moorestephens.com</a>	<a href="mailto:sba@pkf-littlejohn.co.uk">sba@pkf-littlejohn.co.uk</a>
0191 383 6348	01733 397300	020 7516 2200

## **Scales of Fees 201718 to 202122**

The following fees have been determined by SAAA following consultation for the Audit Years 201718 to 202122.

### **Scales of audit fees**

Scales of fees for smaller authorities, are based on bands of annual income or expenditure, whichever is the higher. This means that the fees are broadly proportionate to the public funds involved and the ability of each authority to pay.

Table 1 sets out the scales of audit fees for smaller authorities that complete their Annual Returns fully and accurately within the required timescales, and provide the necessary supporting information and any explanations sought.

Authorities with neither income nor expenditure exceeding £200,000 will be subject to basic limited assurance audit review. Authorities with either income or expenditure exceeding £200,000 will be subject to intermediate limited assurance audit review.

**Table1 Scale of fees for bodies subject to limited assurance review**

<b>INCOME/EXPENDITURE BAND (£)</b>	<b>FEE FOR LIMITED ASSURANCE REVIEW (£)</b>
0 25,000	200 (see note)
25,001 50,000	200
50,001 100,000	300
100,001 200,000	400
200,001 300,000	600
300,001 400,000	800
400,001 500,000	1,000
500,001 750,000	1,300
750,001 1,000,000	1,600
1,000,001 2,000,000	2,000
2,000,001 3,000,000	2,400
3,000,001 4,000,000	2,800
4,000,001 5,000,000	3,200
5,000,001 6,500,000	3,600

**Note:** An authority with neither income nor expenditure exceeding £25,000 will have the right to certify that it is an exempt authority and in normal circumstances no fee will be payable.

### **Reminder letters**

Where a supplier is required to send a reminder to any authority, the supplier will charge the authority £40 for each reminder.

### **Additional work and variations to the scale fees**

If an active authority fails either to submit its Annual Return to the supplier for review by 30 September or (if it is an exempt authority) to provide a certificate of exemption, the supplier will consider issuing a public interest report, the cost of which will be payable by the authority pertaining to the fee income band of that authority as in Table 1 (above).

Extra fees may also be charged, subject to SAAA's approval, in other circumstances, for example where auditors have to:

- consider objections to the accounts from local electors, from the point at which the auditor accepts the objection as valid;
- exercise special powers in relation to the review, such as issuing a report in the public interest; or

- undertake any special investigations, such as those arising from disclosures under the Public Interest Disclosure Act 1998.

Extra fees will be calculated and charged according to the work required, subject to the maximum hourly rates set out in Table 2 below.

**Table 2 Maximum hourly rates for additional work at smaller authorities**

<b>STAFF GRADE</b>	<b>MAXIMUM £ PER HOUR</b>
Engagement lead	355
Senior manager/manager	215
Senior auditor	140
Other staff	105

### **Value Added Tax**

The fee scales exclude Value Added Tax, which will be charged at the prevailing rate on all work undertaken.

[SAAA](#) - Smaller Authorities' Audit Appointments Limited

# PENRITH TOWN COUNCIL

## FINANCE COMMITTEE 12 DECEMBER 2017

- Item:**
- c) Appointment of Data Protection Officer**
  - d) Implementation of Cyber Security audit and cyber security breach prevention**

**Lead Officer:** Town Clerk

**Lead Committee:** Finance

### OVERVIEW

The new EU General Data Protection Regulations (GDPR) are effective from 25 May 2018. The introduction of the new legislation is NOT affected by Brexit.

The Data Protection Act (DPA)1998 is due to be repealed by 25 May 2018.

GDPR retains the existing legal principles of the Data Protection Act 1998 but updates it to consider digital technology and current global working practices.

GDPR retains key definitions used in the Data Protection Act

- Data Controller – this means the council in the context of local government
- Data Processor – responsible for processing data on behalf of the controller – the officers
- Personal data – any information that directly or indirectly identifies individuals

The General Data Protection Regulation requires all public authorities to appoint a Data Protection Officer from 25 May 2018. This report outlines the duties for the post and invites members to consider an appropriate level of funding for outsourcing for a Data Protection Officer.

### RECOMMENDATIONS:

- I. That a sum of £2,000 for the 2018/19 financial year be approved to fund the post of an outsourced Data Protection Officer; and,
- II. That the on-going revenue commitment for the Data Protection Officer post thereafter be provided as part of the budget setting process for future financial years.
- III. That a cyber security audit is ordered via the Councils IT providers to take place in January 2018 and that the on-going revenue commitment for cyber security be provided as part of the budget setting process for future financial years.

## **1. LAW**

- 1.1 The General Data Protection Regulation (GDPR) is the new data protection framework for the EU and will apply in the UK from 25 May 2018. It replaces all current data protection legislation, including the Data Protection Act 1998 (DPA), although the data protection principles within the GDPR are like those in the DPA.
- 1.2 There are still some questions as to how the GDPR will apply in the UK on leaving the EU but the advice of the Information Commissioners Office (ICO) is that this should not distract from the important task of compliance with the GDPR. The important point is that the UK will be subject to the GDPR, regardless of Brexit.

## **2. BACKGROUND**

- 2.1 The GDPR requires all public authorities to appoint a Data Protection Officer (DPO).
- 2.2 The DPO enjoys the same protections against dismissal as the other main statutory officers within the Council, and the post-holder would be required to report to the highest management level in the Council.
- 2.3 Separate guidance issued by Article 29 Data Protection Working Party advises that the officer performing the DPO role must avoid any conflict of interest. The effect of this is that other statutory positions in the Council (e.g. Town Clerk, Deputy Town Clerk, Section 151 Officer) are ruled out from taking up the DPO role, or for that matter those at management level with responsibility for looking after data sets comprising personal data.
- 2.4 Articles 38 and 39 of the GDPR set out the requirement to appoint a DPO and details the requirements of the role. The guidance issued by the Article 29 Data Protection Working Party clarifies that the post-holder must avoid potential conflicts in performing the role, which rules out certain officers in the Council from performing the role.
- 2.5 For serious breaches the ICO can issue a monetary penalty notice of up to £500,000. Under GDPR this could be up to 20 million euros or 4% of turnover, whichever is the greater sum. The GDPR will introduce a duty on the DPO to report certain types of data breach to the relevant supervisory authority, and in some cases, to the individuals affected. Also, under GDPR a breach is more than just the loss of data; inappropriate access to personal data due to the lack of internal controls is also deemed to be a breach.

- 2.6 The GDPR creates some new rights for individuals and strengthens some of the rights that currently exist under the DPA. These are:
- The right to be informed
  - The right of access
  - The right to rectification
  - The right to erasure
  - The right to restrict processing
  - The right to data portability
  - The right to object
  - Rights in relation to automated decision making and profiling.
- 2.7 The GDPR also requires organisations to have comprehensive governance measures in place, which have previously only been considered as best practice e.g. privacy impact assessments are now a legal requirement. Also, running through the heart of the new legislation will be a principle of accountability; meaning that all data controllers must maintain records to show how it is complying with the GDPR. Data controllers may be required to demonstrate to the ICO that it is complying with the GDPR when processing personal data.
- 2.8 Importantly, the GDPR specifically allows public authorities to share the DPO role with other organisations, including other local authorities.
- 2.9 Every organisation processing personal data must carry out safeguards against loss, theft and unauthorised access. Respect for privacy, security of data and awareness of breaches will be key.
- 2.10 There is a duty to report a breach within 72 hours. If that breach is potentially of high privacy risk, then affected individuals should also be advised of the data breach. This is a significant change to the current Data Protection regime in the UK.
- 2.11 The definition of personal data has been extended and includes anything that could be used to identify an individual. The GDPR will be more robust in its protection of data than anything we have previously seen, and Council's will be more accountable.
- 2.12 The Council would be required to demonstrate that it has taken steps to ensure cyber security. A security cyber audit would need to be carried out in advance of May 2018 to test the Councils security compliance. The cost of the audit is circa £1,000 and can be provided by the Councils IT provider. This process can take many months as all UK organisations and businesses will need to go through this process and consequently the audit and verification processes are taking considerable time. The Council is required to be compliant by 28 May 2017. The certification is evidence that the Council have carried out basic steps towards protecting the Council and its data from internet based cyber-attacks.



- 2.13 The Council would be provided with certification recording that the Council's security is compliant with GDPR.
- 2.14 If through the audit process the verifying body delivers an action plan the Council will be required to carry out those actions to attain compliancy. The cost associated with this is expected to be between £1,000 and £1,500.
- 2.15 GDPR compliancy will require more than just an initial cyber security audit. Once the GDPR compliance certification is received the Council, will have to demonstrate that the IT equipment remains secure. This would be in the form of a monthly lower level audit for each piece of equipment at a cost of circa £9.00 per piece of equipment. This would be provided by the Council's IT provider.
- 2.16 Discussions have taken place with the Council's solicitors and accountants to ascertain if they could provide DPO services and both companies have informed the Council that this could be a potential conflict of interest.

### **3. PROPOSAL**

- 3.1 The Council must in law appoint a DPO to ensure compliance with the GDPR.
- 3.2 A draft job/role description for the post has been developed and it is proposed that this will be outsourced as the current level of data held by the Council does not warrant employing a part-time member of staff. This arrangement if agreed would have to be reviewed annually in line with the Town Councils growth and increased activities. For example, the breadth of the role could be expanded to incorporate broader information governance duties, including FOI/EIR requests, subject access requests and provide a corporate oversight and management of information (including, but not limited to personal information) across the Council.
- 3.3 In the initial period between appointment of the post-holder and May 2018 the focus will be on preparing the Council for the GDPR.
- 3.4 The DPO cost has been estimated at a figure of £5,000. There is currently no identified sum set aside for this post within the Council's budget for 2018-19.

- 3.5 The Cyber security audit cost has been estimated and there is no specific provision for this cost in the 17-18 budget. The cost of this work could be met from the IT budget or general reserves.

#### **4. ADVICE REQUEST**

The Cumbria Association of Local Councils has been contacted for advice to seek clarification from NALC on two issues:

- a) *"In LA04 17 – APPOINTING A DPO – NALC advises that the DPO may be an employee. For most parishes this would be the clerk. To qualify as a Data Protection Officer the individual would have to hold the EU GDPR Practitioner (EU GDPR P) qualification (ISO 17024-accredited). Course costs vary from £1,795.00 to £2,000. Some training providers require that the individual hold the GDPR essentials certificate before entering the Practitioners course – this would add circa £1,000 to the training costs. Please can NALC confirm that a council employee acting as the DPO requires the EU GDPR Practitioner (EU GDPR P) qualification (ISO 17024-accredited).*
- b) *Guidance issued by Article 29 Data Protection Working Party advises that the officer performing the DPO role must avoid any conflict of interest. The effect of this is that statutory positions in the Council such as the Section 151 Officer are ruled out from taking up the DPO role, or for that matter those at management level with responsibility for looking after data sets comprising personal data - other officers. Guidance issued by Article 29 Data Protection Working Party appears to conflict with the advice given in LA04 17 as the RFO and Proper Officer roles are statutory. Please can this be clarified?"*

Members will be informed of the result of this enquiry in due course.

#### **5. OPTIONS**

- 5.1 To approve the proposal and to support the recommendations; or to agree some other arrangements that would ensure that the Council complies with its statutory requirements.
- 5.2 It has been proposed by this Council, that as the GDPR specifically allows public authorities to share the DPO role with other organisations, that CALC recruit a county wide DPO paid for via subscription.
- 5.3 Members will be informed of the result of this enquiry in due course.

## **6. IMPLICATIONS OF THE PROPOSAL**

### **6.1 Legal Implications**

Articles 38 and 39 of the GDPR set out the requirement to appoint a DPO and details the requirements of the role. The guidance issued by the Article 29 Data Protection Working Party clarifies that the post-holder must avoid potential conflicts in performing the role, which rules out certain officers in the Council from performing the role.

### **6.2 Financial**

Currently, there is no budgetary provision for this post and therefore if the proposal is supported, Council would need to approve this figure as an amendment to the Budgetary Framework. On-going provision would then be taken account during the budget setting process for future years.

## **7. RISK ASSESSMENT**

The Council must appoint a DPO, to include the duties required by Articles 38 and 39 of the GDPR. If this appointment was not made the Council would be in breach of the law and would expose itself to sanctions from the ICO.

## **8. CONCLUSION**

The DPO role joins the ranks of the other important statutory officer roles within local authorities, such as the Section 151 Officer. Significantly, the role is afforded the same statutory protections as these other roles too. As such, this demonstrates the importance of the position and indeed the importance of the need for compliance with data protection legislation, which will be supported by the increase in the potential level of fines that will become available to the ICO where breaches of the GDPR are found to have occurred.

### **BACKGROUND PAPERS:**

1. L05-17 – General Data Protection Regulations summary of main provisions (1)
2. L04 17 Getting ready for GDPR and Appointing DPOs
3. Summary - General Data Protection Regulations 2018 CALC
4. Draft DPO job description

## CUMBRIA ASSOCIATION OF LOCAL COUNCILS

# General Data Protection Regulations 2018

November 2017

## Introduction

The new EU General Data Protection Regulations (GDPR) are effective from 25 May 2018. The introduction of the new legislation is NOT affected by Brexit.

The Data Protection Act (DPA)1998 is due to be repealed by 25 May 2018.

GDPR retains the existing legal principles of the Data Protection Act 1998 but updates it to take into account digital technology and current global working practices.

GDPR retains key definitions used in the Data Protection Act – eg

- Data Controller – this means the council in the context of local government
- Data Processor – responsible for processing data on behalf of the controller
- Personal data – any information that directly or indirectly identifies individuals

## Key Points

1. **GDPR 2018 updates the Data Protection Act** in the following ways (changes in bold):  
GDPR 6 principles for processing data:

Personal data must be:

- processed lawfully, fairly and in a **transparent** manner.
- collated for specified, **explicit** and legitimate purposes
- accurate and kept up to date: **inaccurate data shall be erased or rectified without delay.**

## 2. GDPR - What's New?

- New duty to appoint a Data Protection Officer (DPO)
- New approach to relying on consent for processing personal data
- New duty to report data breaches (including to the ICO)
- Responding to subject access requests – generally within 1 month and cannot charge a £10 fee.
- More rights for individuals ie the right to be erased/forgotten
- New duty to keep an internal register of processing activities
- Detailed privacy notices – See CALC website under NALC Legal Topic Notes **L08 – 17 Privacy Notices and the Legal Basis for Processing Data**
- Privacy impact assessments in respect of activities to be determined by the ICO – ie when considering using CCTV
- Robust contracts between data controllers (councils) and data processors
- New fines coming in (though there are many stages - warnings, reprimands, corrective orders - before the ICO would fine a data controller or processor)

### 3. Data Controllers' Obligations ie Councils' Obligations

- I. Appoint a Data Protection Officer
- II. Issue privacy notices where appropriate
- III. Report breaches
- IV. Work with data processors

#### i Data Protection Officer (DPO)

Every public authority needs to appoint a DPO – they can be an employee or a contractor.

It is important to read the guidance from NALC - see the attached Briefing Note **LO4-17 Getting Ready for GDPR and Appointing DPOs**. This document will give background on what the legislation requires of a DPO.

Councils must consider what its needs are in terms of becoming compliant, and continuing to be compliant with GDPR, it can then consider how it will address the issue of appointing a DPO.

#### Possible options:

- Appoint a contractor to act as your DPO
- Appoint an internal employee

#### ii Privacy Notices

Fair processing of personal data involves transparency and providing information – in the form of a privacy notice eg when asking residents of the parish for personal information in a survey etc. These notices need to be more detailed than under the DPA.

Information that must be provided by the council (data controller) must be:

- concise, easily understood and transparent
- written in clear and plain language
- free of charge

For more detail see the CALC website members' area NALC Legal Topic Note **L08 – 17 Privacy Notices and the Legal Basis for Processing Data**

#### iii Reporting Breaches of Data Security

Councils must put in place comprehensive and *proportionate* governance measures to prevent breaches of data.

Councils must maintain internal records of processing activities including the name of processing organisations, purpose of processing, description of the categories of individuals and categories of personal data (ie allotment tenants)

Councils will be required to carry out Data Protection Impact Assessments in cases of potentially high-risk processing activities and to consult the ICO in these instances.

Councils should notify the DPO of data breaches eg loss, destruction, alteration, unauthorised disclosure of, or access to, personal data (eg publishing photos from which individuals can be identified on council website) ie more than just losing personal data. Breaches where it is likely to result in a risk to an individual's rights (lost paper files containing employees NI numbers) then these must be reported to the ICO. If the breach is likely to result in the loss of rights and freedoms of individuals the breach must be reported to the ICO and the subject themselves.

further information on reporting data breaches can be found at

#### **iv Work with Data Processors**

If councils work with companies that process data on their behalf there must be a clear and robust contract in place to clearly define the responsibilities of the processor to protect the data.

### **4 When is it lawful to process personal data?**

It will be lawful if:

- I. if consent has been given
- II. it is necessary for the performance of a contractual obligation or it is a contractual necessity
- III. necessary for compliance with the data controller's (the council's) legal obligations
- IV. necessary if it concerns an individual's vital interests (eg a medical emergency) or
- V. necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the council.

### **5. Individual's rights under GDPR**

GDPR creates new rights for individuals and strengthens existing rights under DPA.

Rights include:

- The right to be informed
- The right of access
- The right to rectification
- The right to be erased/forgotten
- The right to restrict processing
- The right to data portability
- The right to object
- Rights in relation to automated decision making and profiling

## **6.Consent**

Local councils may sometimes wish to ask for consent eg to use someone's photograph. There is now a greater duty for positive, specific consent. The list below sets out issues to consider.

Asking for consent:

- Is the request for consent prominent and separate from other terms?
- Is there an opt-in? (opt out no longer acceptable)
- Are there no pre-ticked boxes?
- Is consent in 'plain English'?
- Is it clear why data is wanted and what will be done with it?
- Is consent specific?
- Is the organisation named?
- Is withdrawal of consent clearly 'flagged'?
- Is refusal to consent protected?
- Is consent the appropriate basis for processing the personal data? (See 4 above)

## **Preparing for the General Data Protection Regulations (GDPR)**

### **Checklist from the ICO website**

#### **12 steps to take now**

1. Awareness – talk to your council about the coming changes to the law and the impact it may have.
2. Information your council holds – document what personal data your council holds, where it came from and who you share it with, this may be called an information audit.
3. Privacy Information – review your current privacy notices (ie what you explain when you ask the public for personal information ie names, emails, addresses, photos)
4. Individual's rights – check your council's procedures to ensure that they cover all the rights that individuals have, including policies for deleting personal data.
5. Update your procedures for answering subject access requests within the new timescales (1 month not 40 days).
6. You should identify the lawful basis for processing personal data.
7. Consent – review how you seek, record and manage consent. Remember under GDPR consent must be freely given, specific, informed and unambiguous. There must be a positive opt-in
8. Review how you obtain consent from children

9. Data Breaches – make sure you have the right systems in place to report and investigate personal data breaches.

10. Data Protection by design – this is now a legal requirement and may require a Privacy Impact Assessment under certain circumstances. This is unlikely to affect the majority of parish councils as it concerns organisations keeping a range of data on individuals.

11. Data Protection Officer – designate/appoint someone to take responsibility for data protection compliance.

12. International – does not apply to local council sector

ends

CALC 2017



## **DRAFT SAMPLE -JOB DESCRIPTION – DATA PROTECTION OFFICER**

### **Overall Summary**

This post is key in supporting the Council, to ensure that European and national statutory requirements are met in relation to data protection.

#### **Key responsibilities are:**

- Managing Data Protection Compliance and advising on legal requirements and best practice.
- Being the lead contact with the Information Commissioner's Office regarding potential complaints and breaches, ensuring that requests for information are properly handled.
- Provide an audit role and provide monitoring data to the Council on organisational compliance and conformance.
- Development and maintenance of a DPA knowledge base for officers and members.

#### **Key Tasks and Responsibilities**

- Co-ordinate Data Protection Act activities (including training).
- Ensure organisational compliance, and conformance with Data Protection Principles and highlight key risk areas to the Council.
- Develop, Implement and enforce a suitable and relevant Data Protection Policy and ensure it is reviewed on an annual basis.
- Develop, Implement and enforce a suitable and relevant Data Sharing Code of Practice and ensure that third parties which the Council deals with comply with the necessary practices and agreements held.
- Provide information and guidance on the processing of all personal data.
- Provide a Privacy Assessment tool.
- Process, co-ordinate and respond to all requests for information
- Maintain and establish a register of data owners for sets of information and educate the data owners on their responsibilities (what is data, how is it used, who has access to it).
- Maintain the Councils annual notification/certification to the Information Commissioner's Office

- Undertake systematic Data Protection Act compliance audits in accordance with the Information Commissioners audit tool, including any third-party premises where appropriate.
- Assist with investigations into complaints about breaches of the act and undertake reporting/remedial action as required. Maintain a log of any incidents and remedial recommendations and actions.
- Provide comprehensive reports to the Council on the organisations compliance with the Data Protection Act and related provisions
- Interpret and provide guidance to the organisation on forthcoming and actual changes to relevant legislation on Privacy and the Data Protection Act.
- Promote Data protection awareness by providing training and written procedures that are widely disseminated and made available to all staff and members.
- Ensure that developments in Data Protection requirements and legislation are tracked and that the organisation is in apposition to comply with future requirements.
- Manage the information and archiving process, providing advice and guidance storage requirements and managing the relationship with the off-site archiving provider.

**ITEM: BRING SITE RISK ASSESSMENT**

**Before starting your clean up ensure:**

- Have the correct Personal Protective Equipment (PPE) – eg gloves, Hi-Viz vest, sensible footwear, gloves etc.
- Have the correct equipment – eg Litter grabbers, plastic bags, dog waste bags, brush, shovel etc and know how to use the equipment.
- Consider all the risks and hazards in the work area, eg hazardous waste, broken glass, dog waste, needles, condoms, fly-tipping
- Know the area and how to report incidents or hazardous or unidentified waste, and where to get first aid.
- Staff should only remove litter that has been clearly dropped accidentally.
- Staff are not required to remove waste dumped around the bins and are clearly fly-tipping, nor waste that it is overflowing form full bins or fallen underneath the bins.
- Report all accidents and record in the Councils Accident Book

**RISK ASSESSMENT**

HAZARD	RISK	RATING	CONTROL MEASURE TO BE IMPLEMENTED	MEASURES TO REDUCE EFFECT IN THE EVENT OF AN ACCIDENT
<b>Broken glass, sharps/rusty edges</b>	Cuts & infections	H	<ul style="list-style-type: none"> <li>• Gloves to be worn always.</li> <li>• Use litter grabbers to pick up sharp litter.</li> <li>• Only pick up sharp litter that is within comfortable reach.</li> <li>• If in doubt don't pick up</li> </ul>	Seek medical attention where appropriate. Thoroughly wash any cuts or abrasions as soon as possible, however minor.
<b>Needles</b>	Cuts & infections	M	<ul style="list-style-type: none"> <li>• Leave alone; call the Council for removal, contact EDC 01768 817817</li> </ul>	Seek medical attention where appropriate.
<b>Fly-tipping Heavy/awkward to handle rubbish</b>	Pulled muscles & strains	H	<ul style="list-style-type: none"> <li>• Do not remove - it may contain syringes, broken glass, asbestos, toxic chemicals or other hazardous substances.</li> <li>• NEVER disturb the site - EDC need to gather the evidence ourselves to help identify the fly-tippers and lead to their prosecution</li> <li>• NEVER approach anyone you see fly tipping - they could become violent. If you witness it happening call the police on 101.</li> <li>• Contact: Community Warden - Environmental Protection Team</li> <li>• Email: <a href="mailto:pollution@eden.gov.uk">pollution@eden.gov.uk</a></li> <li>• Telephone: 01768 212490</li> </ul>	Do not remove any fly tipped waste

<b>HAZARD</b>	<b>RISK</b>	<b>RATING</b>	<b>CONTROL MEASURE TO BE IMPLEMENTED</b>	<b>MEASURES TO REDUCE EFFECT IN THE EVENT OF AN ACCIDENT</b>
<b>Batteries, asbestos &amp; miscellaneous chemicals</b>	Potentially dangerous depending on condition	L	<ul style="list-style-type: none"> <li>Do not approach or remove any potentially hazardous waste.</li> <li>Report to the Council for disposal - contact EDC 01768 817817</li> </ul>	Seek medical attention if exposed to pesticides, insecticides or other chemicals – record any label details.
<b>Ground conditions</b>	Sprains, muscle damage & broken bones.	L	<ul style="list-style-type: none"> <li>Wear suitable footwear.</li> </ul>	Thoroughly wash any cuts or abrasions as soon as possible, however minor. Seek medical attention for any serious cuts, bruises or strains.
<b>Vehicles</b>	Collision with moving traffic.	M	<ul style="list-style-type: none"> <li>Avoid proximity to traffic if possible.</li> <li>Wear high visibility clothing if necessary.</li> <li>Be aware of the vehicles around you during the litter pick.</li> <li>Keep a look out.</li> </ul>	Seek medical attention in the event of injury.
<b>People, lone working</b>	Physical or verbal assault	L	<ul style="list-style-type: none"> <li>Be aware of aggressive and difficult people.</li> <li>Withdraw rather than face conflict.</li> </ul>	Seek medical attention following any assault / injury. Report the incident to the Police.
<b>Animals</b>	Lymes Disease carried by animal ticks & bites/scratches from animals	L	<ul style="list-style-type: none"> <li>Wear appropriate clothing.</li> <li>Beware of loose dogs.</li> <li>Avoid contact with animals. Avoid contact with animal faeces.</li> </ul>	Seek medical attention as soon as possible after being bitten or scratched. Wash hands immediately after contact with faeces. Avoid touching eyes or mouth.
<b>Dog faeces</b>	Toxocara canis	L	<ul style="list-style-type: none"> <li>Do not touch dog faeces.</li> <li>Always wear gloves and use a shovel when removing dog faeces.</li> </ul>	Thoroughly wash your hands. Thoroughly wash any cuts or abrasions as soon as possible, however minor. Seek medical attention where appropriate.

<b>HAZARD</b>	<b>RISK</b>	<b>RATING</b>	<b>CONTROL MEASURE TO BE IMPLEMENTED</b>	<b>MEASURES TO REDUCE EFFECT IN THE EVENT OF AN ACCIDENT</b>
<b>Slips and Trips</b>	Falls leading to sprains, muscle damage & broken bones.	L	<ul style="list-style-type: none"> <li>Take weather conditions and possible weather changes into account.</li> <li>Seek medical treatment in the event of injury.</li> </ul>	Seek medical attention where appropriate.
<b>Hedges, Trees, shrubs, fences, and flower beds</b>	Hidden risks as the discarded waste may contain sharps, needles etc.  Trips, cuts & eye pokes as the areas are uneven and overgrown	H	<ul style="list-style-type: none"> <li>Stay within the nominated location of the car park area</li> <li>Be alert to the risks and keep a look out for hazards.</li> <li>Be aware of low hanging branches and exposed tree and shrub roots.</li> </ul>	<p>Stay within the car park area</p> <p>Seek medical attention in the event of injury.</p>
<b>Tools, equipment</b>	Injury from incorrect use	L	<ul style="list-style-type: none"> <li>Team to be shown how to use equipment if appropriate.</li> <li>Allow sufficient working area for the correct and safe use of the tool.</li> <li>Use appropriate protection</li> <li>Have first aid kit available.</li> <li>Staff must use the equipment provided and as instructed.</li> </ul>	Seek medical attention in the event of injury.
<b>Irritants</b>	Poisoning, skin irritations or allergic reactions	M	<ul style="list-style-type: none"> <li>Wear the gloves provided.</li> <li>Wash thoroughly on completion of such operations.</li> </ul>	Seek medical attention for unusual or suspicious symptoms after contact with vegetation.

#### **On Completion of the Litter Pick Ensure:**

- Staff must wash their hands thoroughly as soon as possible after the litter pick and before taking any food or drink.
- Any wounds are redressed after cleaning and disinfecting if there has been any contact with water.
- Staff carry out a personal inspection for cuts etc.
- That the area covered is inspected to see if there is any hazardous material present. If so record for reporting to the Eden District Council.

LOW & MEDIUM - ACCEPTABLE RISK WITHIN THE CONTROL MEASURES IDENTIFIED

HIGH- UNACCEPTABLE RISK, INTRODUCE ADDITIONAL CONTROL MEASURES

**Name:** V Tunnadine    **Job Title:** Town Clerk **Date:** October 2017

**Review Date:** October 2018

**Signature:** 

EDC CORRESPONDENCE – HARD COPY PROVIDED TO MEMBERS



MORRISONS BRING SITE

RUBBISH ACCUMULATING AROUND THE SURROUNDING FLOWER BEDS AND BUSHES.

**For the Attention:** All members of the Penrith Town Council Finance Committee:

Cllr. Kenyon

**Chairman**

Cllr. Burgin

**Vice Chairman**

Cllr, Baker

Cllr. Connelly

Cllr. Jackson

Cllr. Whipp

**For Information only:** All other members of the Penrith Town Council

**Councillors**

Cllr. Clark

Cllr. Graham

Cllr. Lawson

Cllr. Monk

Cllr. Thompson