

Data Protection & GDPR Policy
In line with the
Date Protection Act 1998
&
General Data Protection Regulation 2016

Index

1. Quick assessment data processing overview (page 2)
2. How will the GDPR affect the way in which Parents Against Child Exploitation processes data? (pages 3-4)
3. Detailed analysis concerning the processing of data under the Data Protection Act 1998 (pages 5-6)
4. Detailed analysis concerning the processing of data under the General Data Protection Regulation 2016 (pages 7-10)

Abbreviations

Please note that throughout this document the following abbreviations shall apply:

Parents Against Child Exploitation (Iverson Trust)

Data Protection Act 1998 (DPA)

General Data Protection Regulation 2016 (GDPR)

Data Protection Bill (DPB)

Throughout this document an 'associate' shall mean an alleged sexual offender.

We are instructed to consider scenarios relating to processing of personal data by IVISON TRUST and disclosure to the police. Please let us know if you wish to consider the legal basis for sharing personal data with other stakeholders.

1. Quick assessment data processing overview

Data Protection Act 1998 (current legislation)

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What is happening to the data?

- Sharing a child's personal data with the Police (see section 3(a)).
- Sharing a child's sensitive personal data with the Police (see section 3 (b)).
- Sharing an associate's personal data with the Police (see section 3(c)).
- Sharing an associate's sensitive personal data with the Police (see section 3(d)).
- IVISON TRUST retaining a child's personal data (see section 3(e)).
- IVISON TRUST retaining a child's sensitive personal data (see section 3(f)).
- IVISON TRUST retaining an associate's personal data (see section 3(g)).
- IVISON TRUST retaining an associate's sensitive personal data (see section 3(h)).

General Data Protection Regulation 2016 (comes into effect on 25 May 2018)

Has a data protection officer been appointed?

What is happening to the data?

- Sharing a child's personal data with the Police (see section 4(a)).
 - Sharing a child's special categories of personal data with the Police (see section 4(b)).
 - Sharing an associate's personal data with the Police (see section 4(c)).
 - Sharing an associate's special categories of personal data with the Police (see section 4(d)).
 - IVISON TRUST retaining a child's personal data (see section 4(e)).
 - IVISON TRUST retaining a child's special categories of personal data (see section 4(f)).
 - IVISON TRUST retaining an associate's personal data (see section 4(g)).
 - IVISON TRUST retaining an associate's special categories of personal data (see section 4(h)).
2. How will the GDPR affect the way in which Parents Against Child Exploitation processes data?

It is important to note that there are many similarities between the way in which IVISON TRUST currently processes data under the DPA and how it will need to process data under the GDPR.

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Similarities

The following scenarios stipulate that IVISON TRUST should continue to process data in the same way:

- Sharing a child's personal data with the Police

DPA- processing is necessary for the administration of justice (see section 3(a)).

GDPR- processing is necessary for the performance of a task carried out in the public interest (i.e. administration of justice) (see section 4(a)).

- Sharing an associate's personal data with the Police

DPA- processing is necessary for the administration of justice (see section 3(c)).

GDPR- processing is necessary for the performance of a task carried out in the public interest (i.e. administration of justice) (see section 4(c)).

- Sharing an associate's sensitive personal data with the Police (DPA)/Sharing an associate's special categories of data with the Police (GDPR)

DPA- processing is necessary for the administration of justice (see section 3(d)).

GDPR- processing is necessary for reasons of substantial public interest (i.e. administration of justice) (see section 4(d)).

- IVISON TRUST retaining a child's personal data

DPA- processing is necessary for IVISON TRUST to pursue its legitimate interests (see section 3(e)).

GDPR- processing is necessary for IVISON TRUST to pursue its legitimate interests (see section 4(e)).

- IVISON TRUST retaining an associate's personal data

DPA- processing is necessary for the administration of justice (see section 3(g)).

GDPR- processing is necessary for the performance of a task carried out in the public interest (i.e. administration of justice) (see section 4(g)).

- IVISON TRUST retaining an associate's sensitive personal data (DPA)/Retaining an associate's special categories of personal data (GDPR)

DPA- processing is necessary for the administration of justice (see section 3(h)).

GDPR- processing is necessary for the reasons of substantial public interest (i.e. administration of justice) (see section 4(h)).

Differences

The following scenarios stipulate that IVISON TRUST should process data slightly differently under the GDPR:

- Sharing a child's sensitive personal data with the Police (DPA)/Sharing a child's special categories of personal data with the Police (GDPR)

DPA- processing is necessary for the administration of justice (see section 3(b)).

GDPR- consent is required (see section 4(b)).

- IVISON TRUST retaining a child's sensitive personal data (DPA)/IVISON TRUST retaining a child's special categories of personal data (GDPR)

DPA- processing is necessary for IVISON TRUST to pursue its legitimate interests (see section 3(f)).

GDPR- consent is required (see section 4(f)).

3. Detailed analysis concerning the processing of data under the Data Protection Act 1998

Current DPA Regime

The definition of 'sensitive personal data' means personal data consisting of information as to the racial or ethnic origin of the data subject, his political opinions, his religious beliefs or other beliefs of a similar nature, whether he is a member of a trade union, his physical or mental health or condition, his sexual life, the commission or alleged commission by him of any offence, or any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

3(a)- Sharing a child's personal data with the Police

A child's personal data can be processed in this way if the processing is necessary for the administration of justice (paragraph 5(a), Schedule 2, DPA). If IVISON TRUST provides any personal data of a child to the Police for the purpose of bringing potential sex offenders to justice, then this may satisfy this condition.

3(b)- Sharing a child's sensitive personal data with the Police

A child's sensitive data can be processed in this way if the processing is necessary for the administration of justice (paragraph 5(a), Schedule 2, DPA) and the processing is carried out with appropriate safeguards for the rights and freedoms of the child (paragraph 4(b), Schedule 3, DPA).

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If IVISON TRUST provide personal data of a child to the Police for the purpose of bringing potential sex offenders to justice, then this may satisfy this condition.

3(c)- Sharing an associate's personal data with the Police

The data of an associate can be processed if the processing is necessary for the administration of justice (paragraph 5(a), Schedule 2, DPA). Providing personal data of an associate for the purpose of bringing the potential sex offender to justice could satisfy this condition.

3(d)- Sharing an associate's sensitive personal data with the Police

An associate's sensitive personal data can be processed if the processing is necessary for the administration of justice (paragraph 5(a), Schedule 2, DPA) and the processing is necessary for the purpose of, or in connection with, any legal proceedings, including prospective legal proceedings (paragraph 6(a), Schedule 3, DPA).

By providing sensitive personal data of an associate, for the purpose of bringing a potential sex offender to justice, IVISON TRUST is likely to satisfy these conditions.

3(e)- IVISON TRUST retaining a child's personal data

IVISON TRUST can retain a child's personal data providing it can show that the processing is necessary for pursuing its legitimate interests (paragraph 6(1), Schedule 2, DPA). IVISON TRUST could argue that in order for it to deliver its services the recording of a child's personal data is required.

3(f)- IVISON TRUST retaining a child's sensitive personal data

A child's sensitive data can be stored by IVISON TRUST if the processing is necessary for it to pursue its legitimate interests (paragraph 6(1), Schedule 2, DPA) and the processing is carried out with appropriate safeguards for the rights and freedoms of the child (paragraph 4(b), Schedule 3, DPA). IVISON TRUST could argue that in order for it to achieve its objectives it needs to store the sensitive personal data of a child, as it has appropriate safeguards in place.

3(g)- IVISON TRUST retaining an associate's personal data

The data of an associate can be processed if the processing is necessary for the administration of justice (paragraph 5(a) Schedule 2, DPA). Storing personal data of an associate for the purpose of bringing the potential sex offender to justice could satisfy this condition.

3(h)- IVISON TRUST retaining an associate's sensitive personal data

An associate's sensitive personal data can be processed if the processing is necessary for the administration of justice (paragraph 5(a), Schedule 2, DPA) and the processing is necessary for the purpose of, or in connection with, any legal proceedings, including prospective legal proceedings (paragraph 6(a), Schedule 3, DPA). It could be argued by IVISON TRUST that the processing of the

data will be necessary for the purpose of bringing prospective legal proceedings against an alleged perpetrator.

4. Detailed analysis concerning the processing of data under the General Data Protection Regulation 2016

GDPR Regime

The new GDPR regime comes into effect on 25 May 2018.

The definition of 'special categories' of data, means the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade-union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation. It will no longer include information relating to the commission or alleged commission by a natural person of any offence as set out previously in DPA.

4(a)- Sharing a child's personal data with the Police

Article 6(1)(e) GDPR provides the lawfulness for processing a child's personal data. IVISON TRUST could argue that the processing of a child's personal data is necessary for the performance of a task carried out in the public interest.

Section 8(1)(a) DPB confirms that 'public interest' means the performance of a task carried out in the public interest that is necessary for the administration of justice. IVISON TRUST could argue that providing information to the Police, which could assist an investigation into an alleged sex offender is necessary in order for justice to be administered.

4(b)- Sharing a child's special categories of personal data with the Police

The GDPR does not state the age at which a person is considered to be a child. DPB currently sets age at which a child may provide his/her own consent to be 13, subject to the child having capacity to understand the meaning of consent. IVISON TRUST will therefore need to assess if a child is mentally able to give the necessary consent. It should provide specific training to all staff, so that they are able to ascertain if a child has mental capacity to provide the consent.

Guidance from the Information Commissioners Office suggests that IVISON TRUST should:

- ensure that when it processes this data it provides sufficient protection for the child;
- ensure that proportionate measures are put in place to prevent/deter a child from providing their personal data; and
- take appropriate actions to enforce any age restrictions set by IVISON TRUST.

It is recommended that IVISON TRUST ensures that each child fully understands the implications of the consent that they are providing. IVISON TRUST should consider tailoring its privacy notices, so that different privacy notices are provided to children of different ages. Fundamentally, IVISON TRUST needs to ensure that each child understands the consent they are providing.

IVISON TRUST should seek to obtain the explicit consent of a child, in order to pass special data to the Police (Article 9(2)(a) GDPR). Provided consent has been granted, IVISON TRUST will be able to pass this data to the Police (Article 6(1)(a) GDPR).

Please note that if the consent of the child is withdrawn IVISON TRUST will not be able to share a child's special data with the Police. The reason for this is no other exceptions apply.

IVISON TRUST should think carefully if they intend to rely on consent from an individual with parental responsibility. The reason for this is that the individual with parental responsibility may be abusing the child in question.

In situations where IVISON TRUST does not have consent from the child to pass their special data to the Police, it should ensure that only information classified as non-special is provided. IVISON TRUST should provide training to its employees concerning the procedure they should follow in this situation.

4(c)- Sharing an associate's personal data with the Police

Article 6(1)(e) GDPR provides the lawfulness for processing an associate's personal data. IVISON TRUST could argue that the processing of an associate's personal data is necessary for the performance of a task carried out in the public interest.

Section 8(1)(a) DPB confirms that 'public interest' means the performance of a task carried out in the public interest that is necessary for the administration of justice. As such, IVISON TRUST could argue that providing information to the Police, which could assist an investigation into an alleged sexual offender is necessary in order for justice to be administered.

4(d)- Sharing an associate's special categories of personal data with the Police

Under Article 9(2)(g) GDPR, IVISON TRUST could argue that the processing of an associate's special personal data is necessary for reasons of substantial public interest. This is because it is illegal to sexually exploit children. Under clause 10(3) DPB, IVISON TRUST can only meet the processing requirement in Article 9(2)(g) GDPR, if it can meet a condition in Part 2, Schedule 1, DPB.

IVISON TRUST may be able to rely on the condition of preventing or detecting unlawful acts (paragraph 9, Part 2, Schedule 1 DPB). IVISON TRUST may be able to satisfy this condition if it must process sensitive personal data without the consent of the data subject (so as not to prejudice those purposes), for the purposes of preventing or detecting an unlawful act. It must also be necessary for reasons of substantial public interest. IVISON TRUST could argue that it needs to pass this data to the Police, without telling the associate, so that the Police can build a case against the associate. If IVISON TRUST informed the associate that their data was being handed to the

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Police, the alleged offender may never be brought to justice and it is in the public's interest that a sex offender is brought to justice.

When IVISON TRUST carries out the processing it will only be able to meet the condition in paragraph 9, Part 2, Schedule 1, DPB, if it has an appropriate policy document in place (paragraph 5(1), Part 2, Schedule 1, DPB).

This policy document must explain IVISON TRUST's procedures for securing compliance with the principles in Article 5 of the GDPR (the principles relating to the processing of data) in connection with the processing of personal data in reliance on the condition in question (paragraph 34(a), Part 4, Schedule 1, DPB).

IVISON TRUST must also set out its policies as regards the retention and erasure of personal data processed in reliance on the condition and provide an indication of how long the personal data of an associate is likely to be retained (paragraph 34(b), Part 4, Schedule 1, DPB).

IVISON TRUST must (during the relevant period), retain a copy of the policy document, review it and (if appropriate) update it from time to time (paragraph 35(a)-(c), Part 4, Schedule 1, DPB). IVISON TRUST must also make it available to the Commissioner, on request, without charge (paragraph 35, Part 4, Schedule 1, DPB). The 'relevant period' means a period beginning when IVISON TRUST starts to carry out the processing of an associate's personal data in reliance on that condition and ends at the end of the period of 6 months beginning on the day that IVISON TRUST ceases to carry out the processing (paragraph 35(2), Part 4, Schedule 1, DPB).

IVISON TRUST must retain a record, which illustrates that it is relying on the preventing or detecting unlawful acts condition (paragraph 36(a), Part 4, Schedule 1 DPB) and show how the processing satisfies Article 6 GDPR (paragraph 36(b), Part 4, Schedule 1, DPB). It must also illustrate whether the personal data is retained and erased in accordance with the policies described in paragraph 34(b), Part 4, Schedule 1, DPA. If it is not, then IVISON TRUST must set out its reasons for not following those policies (paragraph 36(c), Part 4, Schedule 1, DPB).

The lawful basis for processing this special category of data is under Article 6(1)(e) GDPR. Section 8(1)(a) DPB confirms that 'public interest' means the performance of a task carried out in the public interest that is necessary for the administration of justice. As such, providing information to the Police, which could assist an investigation into an alleged sexual offender is necessary in order for justice to be administered.

4(e)- IVISON TRUST retaining a child's personal data

The lawful basis for retaining the child's personal data is contained within Article 6(1)(f) GDPR. IVISON TRUST could argue that there is a 'legitimate interest' for it to retain this data, as there is a relevant and appropriate relationship between the child and IVISON TRUST, which is to prevent that child's sexual exploitation.

4(f)- IVISON TRUST retaining a child's special categories of personal data

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IVISON TRUST should seek to obtain the explicit consent of the child to store their personal data (Article 9(2)(a) GDPR). Provided consent has been granted, IVISON TRUST will be able to store this data on its system (Article 6(1)(a) GDPR).

IVISON TRUST should ensure that the child fully understands the consent that they have given. The same procedures outlined in section 4(b) should be followed.

Please note that if the consent of the child is withdrawn then IVISON TRUST will not be able to store a child's special data. The reason for this is no other exceptions apply.

4(g)- IVISON TRUST retaining an associate's personal data

Article 6(1)(e) GDPR provides the lawfulness for processing an associate's personal data. IVISON TRUST could argue that the processing of an associate's personal data is necessary for the performance of a task carried out in the public interest.

Section 8(1)(a) DPB confirms that 'public interest' means the performance of a task carried out in the public interest that is necessary for the administration of justice. As such, IVISON TRUST could argue that providing information to the Police, which could assist an investigation into an alleged sexual offender is necessary in order for justice to be administered.

4(h)- IVISON TRUST retaining an associate's special categories of personal data

Under Article 9(2)(g) GDPR, IVISON TRUST could argue that the processing of an associate's special personal data is necessary for reasons of substantial public interest. This is because under UK law it is illegal to sexually exploit children. Under clause 10(3) DPB, IVISON TRUST can only meet the processing requirement in Article 9(2)(g) GDPR, if it can meet a condition in Part 2, Schedule 1, DPB. IVISON TRUST may be able to rely on the condition of preventing or detecting unlawful acts (paragraph 9, Part 2, Schedule 1).

The full process illustrated in section 4(d) should be followed.

The lawful basis for processing this special category of data is under Article 6(1)(e) GDPR. Section 8(1)(a) DPB confirms that 'public interest' means the performance of a task carried out in the public interest that is necessary for the administration of justice. As such, providing information to the Police, which could assist an investigation into an alleged sexual offender is necessary in order for justice to be administered.

Data Protection Officer/Requests from the Police

Although there is no statutory duty on IVISON TRUST to appoint a Data Protection Officer ("DPO") it may be prudent to do so in light of the categories of data processed by the charity and the purposes for processing.

The DPO could be responsible for dealing with data requests from the Police and deciding if IVISON TRUST should provide this information.

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It is important to note that there may be situations where a legal duty overrides the GDPR. For example, where the Police produce a Court Order requiring disclosure of personal data. Nonetheless, the DPO should check the legal basis the Police are relying on before providing the personal data. The DPO should seek legal advice if they are unsure if IVISON TRUST should provide the data in question.

Wrigleys would be happy to provide an estimate for work to be undertaken on reviewing and drafting the following documents:

- Data Privacy notices for children and adult users of your services;
- Data Protection policy to incorporate information regarding provision of personal data (including special category data) to third parties
- Data Retention and Destruction Policy
- Data Sharing Agreements

Adopted by Board of Trustees on (date): 22nd July 2019

Signed: Ann Lucas, Chair of Trustees