

# North Lanarkshire Council Report

## Finance & Resources Committee

approval  noting

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## Annual Data Protection Report Financial Year 2019/20

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### Executive Summary

The purpose of this Report is to provide Committee with information on the Council's data protection compliance and activity for financial year 2019/20.

### Recommendations

It is recommended that the Committee:-

Notes the content of the Report

### The Plan for North Lanarkshire

Priority Improve North Lanarkshire's resource base

Ambition statement (25) Ensure intelligent use of data and information to support fully evidence based decision making and future planning

## 1. Background

- 1.1 The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA) came into force on 25 May 2018. This Report provides an update, following the introduction of the legislation, in relation to data sharing, breaches, complaints, training for the financial year 2019/20 reported on by the Head of Legal and Democratic Solutions, as the Council's Data Protection Officer (DPO).

## 2. Report

### 2.1 Data Sharing Register

- 2.2.1 The register is held by the Data Protection Officer. The purpose of the register is to ensure that there is corporate oversight of the nature and extent of formal data sharing agreements with third party agencies. All services are required to continue to contribute to the population of the register.

- 2.2.2 The Register of Data Sharing Agreements is available on Connect. It is part of the function of the Council's Data Management Team (previously known as the Information Governance Working Group) to consider the register and notify any appropriate amendments to the Register to the DPO. The register is, by nature, a constantly evolving document. It is the opinion of the DPO that it would be beneficial to take further steps to ensure, so far as possible, that the register properly records the extent of data sharing agreements to which the Council is a party. Further work is being carried out within Legal and Democratic Solutions in conjunction with the Data Management Team to reinforce arrangements to ensure that all copies of executed data sharing agreements are being properly recorded in the register. The existing version of the register has been made available on Connect. The register is being further revised to ensure that Services are categorised to accurately reflect to the Council's corporate structure.
- 2.2.3 The legitimacy of sharing personal data is regulated by the lawful basis provided under GDPR and the DPA. The Information Commissioner's Office (ICO) has recently issued a revised Data Sharing Code of Practice, a useful resource for the Council in ensuring that any data sharing undertaking, either on an ad-hoc basis or under a formal data sharing agreement, is compliant with the legislation.

## 2.2 Complaints

- 2.2.1 There were five recorded complaints to the ICO by individuals during the financial year 2019/20 in respect of the Council's processing of their personal data. The subject matter variously included complaints that the Council had failed to keep records of personal data up to date, failed to adequately progress a subject access request and had, in certain cases, inappropriately disclosed personal data to third parties.
- 2.2.2 No further or enforcement action was taken by the ICO in respect of these complaints. Two separate complaints were recorded within the Council's internal complaints Lagan system. These related to a failure to progress responses to a subject access request within timescales. These complaints were upheld and remedial action taken.

## 2.3 Data Breaches

- 2.3.1 The Council maintains a record of data breaches in accordance with its Information Governance Policy Framework. The total number of breaches notified to the DPO in financial year 2019/20 was 67. Of these, 12 were considered to meet the threshold for reporting to the ICO and were reported accordingly.
- 2.3.2 The ICO did not take any further or enforcement action in regards to any of the breaches reported to it, however, it did make a number of recommendations in response to certain breaches:-
- changes should be made to the Council's policy and practice on metadata – a communication has since been issued to Heads of Service confirming the recommended practice in ensuring metadata is removed from documents prior to disclosure;
  - review existing data protection policies, procedures and mandatory data protection training – an interim review of the Data Protection policy has been carried out by the Data Management Team and Data Governance Board, with a full review due to be completed by the end of 2020. The mandatory data protection online training module has been updated;
  - work towards a very high percentage completion rate for data protection/information governance training, and ensure processes are in place to

monitor completion rates and report to senior managers/working groups – the Data Management team, on the instruction of the Data Governance Board, are currently working with Talent & Organisational Development to increase completion rates for mandatory training. Training statistics continue to be regularly reported to the Data Governance Board by the DPO;

- investigate the causes of a break-in at a Council building and take any measures required to reduce risk of further incidents - this exercise has been completed;
- ensure robust checking procedures are in place for uploading documents onto Council systems – passed to service for implementation;
- various recommendations were made relating to review of the First Class system (which is an internal electronic communication system used by the education service) on technical security aspects and practical operation and supervision of the use of the system. The full decision has been provided to the Education Service for their further consideration.

2.3.3 This represents a significant increase in the number of recorded data breaches in previous financial years, which is not necessarily indicative of poor performance. This is consistent with the national picture in relation to increasing levels of reported and recorded data breaches within local authorities and other public bodies as described by the ICO. This demonstrates an increasing awareness within services of the requirement to report and record data breaches under the legislation. It is anticipated that the level of reported breaches will continue to increase for some time to come. Increased reporting is one significant factor in the levels of breaches being reported. Good practice in the processing of personal data will also fundamentally affect the levels of data breaches within the Council. Continued emphasis on the importance of secure processing of personal data should contribute to a decrease in the levels of reported and recorded data breaches in the longer term.

## 2.4 Training

2.4.1 The General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA) came into force on 25 May 2018. As part of the Council's preparation for the new legislation, a series of training sessions were held for senior managers and elected members. These included briefings on key obligations, rights of individuals, the role of the data protection officer, data breaches, contracts with processors, implications for employment and a training session dedicated to GDPR as it affects elected members. In addition, online training modules were developed for staff. These Data Protection Act 2018 and Information Security Awareness modules are mandatory for all staff and elected members. It has been recognised that there is a requirement to increase the level of uptake of such training by employees. The Data Management Team and the Data Governance Board are, as part of their work in this area, actively considering addressing steps which require to be implemented to increase this level of uptake. In the course of work carried out this year an improved Data Protection module has been developed by Talent & Organisational Development. This is now available to staff online and further advanced modules of data protection training are under development.

## 2.5 Performance Monitoring

- 2.5.1 During the financial year 2019/20, there were varying degrees of consistency in terms of services reporting the number of subject access requests (SARs) received by their service and the extent of compliance with statutory timescales in responding to such requests. This created significant difficulties in obtaining reliable information in this area for the purposes of performance and management reporting. This was identified as part of the work of the then IGWG and IMWG, and officers within the IMWG were tasked with developing and implementing a more effective system of recovering and recording such information. Accordingly, an improved system of recording and reporting SARS has been developed utilising the Council's Sharepoint platform and this was implemented in December 2019. This allows the DPO to directly access at any time the number of SARs received by services and the levels of compliance. The platform also actively supports the administration of SARs by services by providing proactive reminders to relevant officers in advance of the statutory time limit. It is envisaged that DigitalNL, when introduced, will facilitate this function, however, until that point, the Sharepoint system is considered to afford a more reliable basis for performance and management information.

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## 3. Equality and Diversity

### 3.1 Fairer Scotland Duty

Not applicable

### 3.2 Equality Impact Assessment

Not applicable

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## 4. Implications

### 4.1 Financial Impact

None

### 4.2 HR/Policy/Legislative Impact

This report forms part of the duties of the DPO in compliance with the requirements of GDPR.

### 4.3 Environmental Impact

None

### 4.4 Risk Impact

This report contains relevant information that allows tracking and monitoring of performance in relation to Information Governance & Information Security, and as such forms part of the Council's Information Governance arrangements. 'Information Governance & Information Security' is noted as a key corporate risk on the Council's corporate risk register, with a residual rating of '20', it currently has the highest residual rating on the register. The tracking and monitoring of the Council's performance in this area will form part of the management controls aimed at reducing this risk, and through

time will assist the Data Governance Board and CMT in their understanding, and provide some assurance of how well the risk is being managed, helping to focus on where further actions are necessary to improve the control environment and mitigate this risk further.

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**5. Measures of success**

- 5.1 It is important to acknowledge that any rise in the reported number of data breaches may be due to an increased level of reporting by Services following the introduction of the GDPR and increased awareness of breach reporting requirements. At the same time it may simply indicate a higher number of genuine errors. The national experience since the inception of the GDPR has been a significant and sustained increase in the number of recorded data breaches across the public sector in Scotland. The ICO have indicated that they regard this as positive as it demonstrates increased awareness and implementation of breach reporting within organisations. Clearly, it is anticipated that this increase will plateau at some point and thereafter begin to reduce as practice improves based on experience of previous data breaches and enhanced systems of processing personal data are introduced. It is not realistic for any organisation to expect a key performance indicator of zero data breaches as there will always be potential for some degree of human error or systemic failure. The objective should be to keep these to an absolute minimum.

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**6. Supporting documents**

- 6.1 None

A handwritten signature in black ink, appearing to be 'C. C. C.', written in a cursive style.

**Head of Legal and Democratic Solutions**