Justice Committee

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012

Supplementary written submission from Police Scotland

GENERAL DATA PROTECTION REGULATION (GDPR) AND DATA PROTECTION ACT (DPA) 2018

Thank you for your correspondence dated 25 September 2018, in relation to the impact of GDPR legislation on the sharing of information between Police Scotland and third sector organisations and how this issue is being tackled.

To assist the Justice Committee’s understanding in relation to this matter I would like to provide some key background information.

Background

Police Scotland’s interim Vulnerable Persons Database (iVPD) is an incident based database which was approved and introduced in 2013. iVPD records information about individuals who are, or are perceived to be, experiencing some form of adversity and/or situational vulnerability which may impact on their current or future wellbeing.

The database also records incidents where there has been an immediate crisis response required in respect of adult or child protection; domestic abuse; hate crime; youth offending and is used to record details of victim’s rights under Section 8 and 9 of the Victims and Witnesses (Scotland) Act 2014. This is the database in which information is recorded, assessed and shared with relevant statutory agencies and/or 3rd sector organisations/advocacy where appropriate.

Current Practice

In 2017, Police Scotland introduced a Data Protection Reform team for the preparation and implementation of GDPR and the adoption of processing conditions for the sharing of wellbeing concerns.

The reform of Data Protection legislation provided Police Scotland with the opportunity to view how we share information with our partners and ensure that what we share is proportionate, appropriate and compliant with the new legislation. In doing so, we have reviewed our information sharing processes in the context of wellbeing concerns that fall below what we would consider to be an adult or child protection issue. This has resulted in new processes being put in place to ensure legislative compliance. Due consideration was given to the various lawful processing conditions which are applicable in these circumstances, alongside the necessity and proportionality of doing so.

Police Scotland rely on a number of lawful bases for sharing personal information, which are compliant with the requirements of the new legislation. These include provision within Section 32 of the Police and Fire Reform CSJ Act 2012 which
outlines the purpose of policing in Scotland as being ‘to improve the safety and well-being of persons, localities and communities’.

In this regard, in line with the spirit of the new legislation our arrived at position is that information sharing with non-statutory partners should as a matter of generality be predicated on consent: other than in those exceptional circumstances where it is genuinely necessary and proportionate to share the information without consent.

This works in practice by Police Scotland Divisional Concern Hubs triaging, researching, assessing and sharing relevant, necessary, justifiable and proportionate information with partners to secure appropriate interventions and support which is in compliance with statutory requirements, national guidance and GDPR.

All individuals have the right to be informed about the collection and use of their personal data. This means that on attending an incident where police are required to record personal information on the iVPD, officers must inform the member of the public that information from the incident will be recorded and assessed on police systems and that we may share relevant information with appropriate statutory agencies, who work in partnership with us to help keep people safe.

Individuals are also informed that their information can be shared with local 3rd sector support and advocacy services, with their consent. In order to do this, police are required to formally record an individuals explicit consent for this sharing to take place. If a person consents, police will pass their name, address, date of birth, other relevant information and details of the incident to the organisations they have consented to having their details shared with.

With effect from 25 May 2018, individuals have the right to withdraw consent at any time. Police share information as soon as reasonably practicable therefore individuals have a limited time in which to withdraw their consent before this will have taken place. This does not, however affect an individual’s right to their right to withdraw consent at any time.

**Ongoing work**

A Data Protection Impact Assessment has been completed for consideration by the Information Commissioners Office (ICO) in relation to Police Scotland’s collection and sharing of information with partner agencies.

Policing in Scotland has developed, over the last 20 years or so, strong and collaborative partnerships with key services both statutory and 3rd sector that provide critical professional expertise and services to many people who find themselves at risk of harm or significant harm. That partnership working in areas of early intervention, support and advocacy has been built on the provisions of responsible and auditable pathways of referral from Police to the service provider.

Introduction of the iVPD and the development of Concern Hubs across each local policing division in Scotland has further strengthened our ability to apply clear assessment, rationale and audit of our information sharing pathways.
While we do not consider that the routine information sharing of wellbeing concerns with non-statutory partners, other than where consent has been obtained is permitted by the legislation, we are currently reviewing this relative to a number of areas. These include the sharing and receiving of information within Police Scotland regarding Child Sexual Exploitation (CSE), Youth Offending and Domestic Abuse, where it has been highlighted that some partnership practices may have been affected by the legislative reform.

This review will consider existing protocols and operating arrangements and will seek to develop clear and consistent guidance for staff in these key areas.

I hope this is helpful. If further clarity is required please do not hesitate to contact me.

Gillian MacDonald
Assistant Chief Constable
5 October 2018