

Chapter 1

Introduction

A legal framework regulating how organisations must hold the personal data of individuals was first introduced in the UK in 1984, and has subsequently been revised as the result of changing expectations regarding personal privacy, concerns about potential misuse of personal details, and the growing commercial value of personal data.

The current legal framework consists of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA18), both of which came into effect in May 2018. DPA18 replaced the Data Protection Act 1998 (DPA98), and ensures that the key requirements and principles in the GDPR are enshrined in UK law. Any new documents being created should refer to “General Data Protection Regulation/Data Protection Act 2018” or “data protection legislation”, so that they will not need updating again in the event that the UK leaves the EU. Put simply, data protection legislation sets out the responsibilities of organisations, including fostering services, that hold and use people’s personal data. The context is helpfully set out by the Information Commissioner’s Office (ICO) in a report (2014):

Fostering agencies process highly sensitive information in both paper and electronic form relating to foster carers, and looked after children and their families.

Potential foster carers provide their personal information to agencies in order to be assessed for their suitability for fostering. Much of this information must be forwarded to an independent panel that participates in the approvals process. It includes information such as medical history, marital status, relationship information, employment, criminal convictions, religious beliefs, etc. Within fostering agencies, this information is collected within an assessment report.

Local authorities send profiles of looked after children requiring foster placements to the agencies so that they can identify suitable matches. These profiles include medical history, birth parent information, previous placement information, ethnicity, educational achievement, behavioural issues, etc.

Agencies then send detailed information about suitable carers to the local authority in order to facilitate a match. This presents a particular set of challenges due to the requirement for very sensitive information to be shared quickly and easily. In the case of fostering agencies,

this requirement is often intensified by their desire to quickly secure commercial contracts with local authorities.

This Good Practice Guide looks at the implications of data protection legislation for fostering services. The guide will be most useful to fostering providers, but will also be relevant to those in local authorities who are responsible for children in care, in-house fostering services, and for commissioning services from fostering providers.

Chapter 2 of the guide sets out the key features of the GDPR and DPA18, and **Chapter 3** identifies the fostering legislation in England that relates to the processing of personal data in that context.

Chapter 4 begins to look at the implications of this legal framework for fostering services. **Chapter 5** considers the implications of data protection legislation for foster carers, how they are defined within that legislation, and how fostering services will need to support them with their data processing responsibilities.

Fostering services will hold considerable personal information on their foster carers and the children who are placed with their foster carers.* Detailed consideration about the processing of this data is provided in **Chapters 6 and 7** respectively.

The GDPR contains a requirement to have suitable arrangements in place when one organisation shares information with, or processes data on behalf of, another organisation. This is most obviously the case in relation to fostering services working with local authority information about children and young people, but is also relevant to working with other individuals and organisations. This is considered in **Chapter 8**.

The purpose of data protection legislation is to ensure that personal information is kept safe and shared with others only in agreed or stipulated circumstances. **Chapters 9 and 10** look at safe systems for holding and managing data, covering technical aspects as well as organisational systems and activities such as secure IT systems, staff training, audits, and accreditation.

Chapter 11 looks at the consequences of a data breach, and sets out what needs to happen in those circumstances, before **Chapter 12** concludes the book.

* Fostering services will also have data processing responsibilities in relation to their staff, but that will fall under a human resources remit and so is not a feature of this book.

Note to this edition

This guide was developed in the context of discussion with various interested parties and experts in England. While data protection law is UK-wide, in terms of application, it is necessary to look carefully at the detail of the country-specific fostering and child care legislation, and day-to-day practice. The authors do not have expertise or practice experience in these aspects outside of England. This means that while significant parts of the guide will be relevant and helpful to practitioners in Scotland, Wales and Northern Ireland, they should not assume that what is correct in an English context translates directly into their own countries, and they will likely need to take legal advice as necessary.