

Position Statement: GDPR and Independent Practice

What is the current situation?

RCSLT members working in independent practice have expressed concerns about being fully compliant with the General Data Protection Regulation (GDPR) by the 25 May 2018. Independent speech and language therapists (SLTs) comprise approximately 10% of the current speech and language therapy workforce¹, working in a variety of settings and with multiple business models.

There is an increasing trend for independent practitioners to undertake work for larger organisations such as schools and local authorities. As part of GDPR preparations, some settings are requiring formal declarations that those who work for them are “GDPR compliant” by the 25 May 2018 deadline, otherwise contracts will be terminated. This is causing anxiety within the independent sector.

Additionally, the independent sector, being composed of sole traders and small businesses, cannot access information from a large national employer such as the NHS and to date there is limited sector-specific guidance from expert sources.

Recommendations and resources

The GDPR builds on the Data Protection Act 1998 and practitioners who are already following best practice under the previous regulations will be in a good position to meet the new standards. Nevertheless, the RCSLT recognises concerns about being GDPR compliant by 25 May 2018. The Information Commissioner’s Office (ICO) is aware of the challenges faced by small organisations and in its most recent e-newsletter Elizabeth Denham (Information Commissioner) gave this message: *“To small and micro businesses, clubs and associations who are not quite there, I say ... don’t panic! ... we pride ourselves on being a fair and proportionate regulator. That will continue under the GDPR. 25 May is not the end of anything, it is the beginning, and the important thing is to take concrete steps to implement your new responsibilities — to better protect customer data.”*²

The RCSLT recommends that members:

- continue to risk assess their data protection policies and processes and make plans for improvement. It is advised that you clearly document your decisions and plans to show that you are actively working towards full compliance. The ICO would require evidence of this should it need to investigate for any reason.
- consult the ICO guidance on [contracts](#) where schools are seeking declarations of GDPR compliance. It is important that the contractual arrangements in place clearly define roles and responsibilities relating to data processing and that any data sharing agreements are drawn up consistently and accurately, clearly identifying where responsibility lies.
- consult guidance published by the ICO. The [ICO website](#) contains a wealth of practical advice on this subject and is being updated on a regular basis. The RCSLT have produced [guidance](#) signposting members to the most relevant information. In addition, the RCSLT is working with the ICO to further develop specific resources for SLTs and would recommend members continue to review the RCSLT webpages regularly.
- refer to the summary of key points in this paper.

Key points for SLTs in independent practice

- Under the Data Protection Act 1998, it is already necessary to have a valid condition for processing data, but the GDPR extends this by requiring the “lawful basis for processing” to be made transparent and explicit to the data subject. The lawful basis itself needs to reflect the function (set out in law) by which the body requesting the processing is going to use the data. The most appropriate lawful basis depends on the context of processing data; there is no ‘one size fits all’ answer. It is important to identify this correctly as the lawful basis cannot be changed subsequently without good reason.
- Most clinical work involves processing sensitive information, known as “special category data”. SLTs therefore need to identify the lawful basis (under Article 6 of the GDPR) and a further condition for processing special category data (under Article 9 of the GDPR). As regulated health professionals, SLTs are eligible to use the health condition (condition (h) under Article 9 of the GDPR). The most appropriate lawful basis under article 6 would then depend on the individual circumstances. For example, if contracted to a local authority it may be appropriate to select the lawful basis used by that authority. Some bases are appropriate for some situations and not others; for example, “legitimate interests” is an available lawful basis but may not be the most appropriate in the context of processing health data.
- When an independent practitioner carries out work for another organisation (such as a school or local authority), it is often assumed that the larger body is the data controller and the SLT is the data processor. This is a misconception: in their normal clinical role, SLTs are data controllers.
- It is advisable that data sharing agreements and contracts with other relevant data controllers and processors are reviewed and updated, as appropriate. Documentation of processing activities is a key requirement of GDPR; such documentation will enable the organisations involved (and the ICO) to identify where responsibility lies if, for example, there is a data breach.
- As a starting point, the ICO suggests that data controllers should ask themselves the following questions:
 - What personal data do we use? (and make a plan for cleansing data/upgrading security as appropriate)
 - Which lawful basis are we relying on?
 - Which rights do individuals have?

This will give the information required for the privacy notice. You can have one for each lawful basis or combine them into one that covers all scenarios, indicating to the data subject which one covers their particular situation.

References

[1] Workforce percentage has been calculated using current figures of 1337 members of the Association of Speech and Language Therapists in Independent Practice (ASLTIP) and 13,173 certified practicing members of RCSLT. This is a conservative estimate since not all independent practitioners are members of ASLTIP.

[2] Information Commissioner’s Office (2018) ICO May e-newsletter. [Online]. Available at: <http://ico.msgfocus.com/q/1AFL5SA15h/wv>