



<p><b>Impact of the Data Protection Bill on NHS primary care providers</b></p> <p><b>Briefing for Commons REPORT STAGE</b></p>
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**Why we support amendment 19**

The Optical Confederation, British Dental Association, National Pharmacy Association and Pharmaceutical Services Negotiating Committee **strongly support amendment 19 in the names of Christine Jardine and Julie Cooper MPs to Clause 7 of the Data Protection Bill.**

The Bill as currently drafted includes NHS primary care providers such as high street optical and dental practices and pharmacies in the definitions of “public authorities” and “public bodies”, which are based on freedom of information (FOI) law. **This means that every provider, regardless of size, will be required to appoint a statutory Data Protection Officer (DPO).**

**This amendment will in no way compromise the security of patient data, but will avoid the Bill imposing serious, unnecessary and unjustified new burdens** on the many small and medium sized high street primary care businesses that currently provide NHS-funded dental and pharmacy services and sight tests.

Without this amendment, Clause 7 of the Bill:

- **will do nothing to improve the security of patient data**, because dental, optical and pharmacy providers are already tightly regulated and must comply with NHS requirements on patient confidentiality (see below)
- **but it will place a disproportionate and costly new burden on small businesses that provide NHS services**, going far beyond the requirements of the GDPR.

The GDPR itself only requires an organisation to appoint a DPO if it is a genuine public authority, or processes sensitive data, such as healthcare data, “on a large scale”. This requirement was not intended to capture primary care providers as a matter of course, and in the case of providers that don’t process data on a large scale, it is simply not needed. Larger providers that process sensitive patient data on a large scale are already required to appoint a DPO under the GDPR, regardless of the Bill, and this amendment will not change that.

Gold-plating the GDPR by requiring all NHS primary care providers to appoint a statutory DPO will impose a disproportionate cost burden on small providers. A DPO must have “expert knowledge of data protection law and practices” and be able to provide advice on legal obligations, and carry out audits.

These high street providers are private businesses which often employ only a handful of healthcare practitioners and support staff. Most will not have such skills or capacity in-house and would have to buy in help, at significant cost. One provider offering NHS services and employing three healthcare practitioners has recently been **quoted a figure of over £11,000 for an external company to provide DPO support for a year**, and over £8,000 for each

subsequent year. This is an entirely unnecessary and unreasonable cost burden to place on small NHS primary care providers.

In response to our concerns the Government has said that it “is confident that the Information Commissioner will be pragmatic, fair and proportionate in considering how primary healthcare providers implement” the DPO requirement. However, it is not reasonable – or consistent with the principles of good regulation – for the Government to introduce entirely unnecessary new regulatory requirements on small businesses and then rely on the regulator to police them “proportionately”.

### **Background – dental, optical and pharmacy providers already have to meet strict requirements on data protection and patient confidentiality:**

- **Optical practices** providing NHS sight tests under GOS must already have a named person responsible for issues relating to confidentiality, and those delivering services under the NHS Standard Contract already have to comply with NHS Digital’s data security requirements. All optometrists and dispensing opticians are tightly regulated by the General Optical Council (GOC) and have to comply with its [standards](#), including requirements to maintain confidentiality, respect patients’ privacy, and ensure staff are aware of their confidentiality obligations. Businesses registered with the GOC must also comply with these rules.
- Similarly, all **dental practices** are regulated by the General Dental Council and the Care Quality Commission, including in respect of confidentiality and data security – and NHS dental practices will have to comply with the new NHS Information Governance requirements.
- **Community pharmacies** appoint Information Governance leads, comply with Information Governance standards and complete a self-assessment Information Governance Toolkit yearly in England; similar arrangements apply in the rest of the UK. Pharmacists and pharmacies in England are regulated by The General Pharmaceutical Council which requires all pharmacy staff to respect and maintain patient confidentiality and privacy.

### **Other Public Authorities**

The Government have tabled amendments for the Report Stage which will exempt parish councils from the Bill’s definition of public authority, and therefore from the requirement to appoint a DPO purely on the basis that they are a public authority. We agree it is unnecessary and burdensome for parish councils to have to appoint a DPO, and think the same applies to small primary care providers – which also have very limited resources and do not process sensitive data on a large scale.

### **Contacts for further information**

If you have questions about the contents of this briefing or would like further information, please contact:

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