



20 March 2018

Margot James MP  
Minister for Digital and the Creative Industries  
Department for Digital, Culture, Media & Sport  
100 Parliament Street  
London SW1A 2BQ

Dear Minister,

We are writing further to our letter to you of 21<sup>st</sup> February, regarding our concerns about the impact of the Data Protection Bill on the 40,000 dentists, 11,500 community pharmacies, and 19,000 optical professionals our organisations represent. You might be aware the National Pharmacy Association and the Pharmaceutical Services Negotiating Committee also raised this issue in a separate letter to Matt Hancock MP on 16<sup>th</sup> February.

As we stated in our previous letter, we are concerned that the Bill would put an unreasonable and unnecessary burden on small NHS primary health care providers, which are also private businesses. We are referring here to the requirement of the Bill for every NHS provider, regardless of size, to appoint a statutory Data Protection Officer (DPO).

We believe this goes beyond the requirements of the General Data Protection Regulation (GDPR), which only requires a body to appoint a statutory DPO if it is a public authority or if it processes certain categories of data, including healthcare data “on a large scale”. In our view, most high street primary care providers would not meet the GDPR definition of processing healthcare data on a large scale, which was not intended to capture primary care providers as a matter of course. Therefore, most primary care providers of NHS-funded services would only need to appoint a DPO because of the way the Bill defines “public authority” in Clause 7, using the same definition as the UK’s Freedom of Information legislation.

The DPO requirement in Clause 7 of the Bill is unlikely to provide any practical benefit for patients – whether in terms of care or improving data security. That’s because primary care providers are already tightly regulated and obliged to meet strict requirements on data protection and patient confidentiality. Those providers who do process healthcare data on a large scale will be required to appoint a DPO by the GDPR in any case.

As you are aware, the GDPR requires a DPO to have “expert knowledge of data protection law and practices” and the ability to carry out a range of professional functions, including providing advice and training on legal obligations, and carrying out audits. Although a DPO can be an existing member of staff, most community pharmacies, dental and optical practices will not employ staff with all the legal and

auditing skills required of a DPO – and they do not need to, given the scale on which most of them process patients' personal data.

Over recent months we have asked our respective members to look into the cost of hiring an external DPO and we have also been carrying out our own market research. We have been shocked by some of the quotes we have seen. One BDA member who owns a single medium-sized practice (two dentists and one dental hygienist) was recently quoted £11,340 for the first year, and £8,640 per year thereafter for an external company to provide DPO support for his business.

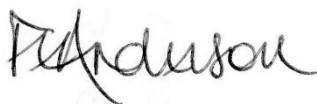
Our members are very concerned about the additional costs of this new requirement, and the extra level of red tape about to be unnecessarily imposed on what are already highly regulated professions, facing high compliance costs. We believe this new administrative and financial burden would put providers of NHS primary care services at a disadvantage compared to small private providers – who would not be required to have a DPO – and might deter some of them from delivering NHS work.

We were very disappointed to hear that despite our letters and the written evidence our organisations subsequently submitted to the Bill Committee, serious concerns of tens of thousands of health professionals providing NHS services did not even get acknowledged, let alone given due consideration, when Clause 7 was scrutinised by the Committee last week. We do hope that this could be rectified in the later stages of the Bill's passage through Parliament.

Our preferred option, which we have been calling for since the Bill entered the Lords, would be to amend Clause 7 of the Bill to exempt primary care providers from the definition of 'public authority'. If this cannot be achieved during the remaining stages of the Bill, we would alternatively seek an urgent assurance that the Government will use the regulation-making power in Clause 7 of the Bill, which enables Ministers to modify the meaning of 'public authority' and 'public body' for the purposes of the GDPR, to exempt small NHS primary care providers from this definition.

We would of course be happy to meet you or your officials to discuss this.

Yours sincerely,




Fiona Anderson – Chair, Optical Confederation



Mick Armstrong – Chair, British Dental Association



Ian Strachan – Chair, National Pharmacy Association



Gordon Hockey – Director of Operations and Support, the Pharmaceutical Services Negotiating Committee

CC Liam Byrne MP, Shadow Minister for Digital Economy

Brendan O'Hara MP, Scottish National Party Spokesperson for Culture and Media

Baroness Bonham-Carter of Yarnbury, Liberal Democrat Spokesperson for Culture, Media and Sport