



Circular Letter 0012/2024

**To: The Managerial Authorities of Recognised Primary, Secondary,
Community and Comprehensive Schools
and
The Chief Executives of Education and Training Boards**

**THE GENERAL DATA PROTECTION REGULATIONS (GDPR) –
RESPONSIBILITIES OF DATA CONTROLLERS IN
RESPECT OF THE OCCUPATIONAL HEALTH SERVICE
(OHS)**

1. Purpose of this Circular

- 1.1. The purpose of this Circular is to confirm the role and the relationship of the Employer, Medmark Limited and the Department of Education as Joint Data Controllers with regards to the processing of personal data and special category personal data in relation to the Occupational Health Service (OHS) for the purposes of Section 79 of the Data Protection Acts 1988 to 2018 and Article 26 of Regulation (EU) 2016/679 (GDPR).
- 1.2. It is a requirement under the GDPR that Joint Data Controllers set out their respective responsibilities in a transparent manner by means of an agreement and that is the purpose of this Circular.
- 1.3. Please ensure that the contents of this Circular are brought to the attention of all members of the Board of Management/Education and Training Board and all relevant employees (teacher, special needs assistant and clerical officer/caretaker (employed under the 1978/79 Scheme)) in your employment, including those on leave of absence.

Further information is available from the Department of Education's website at www.gov.ie.



2. Definitions

- 2.1. “The Department” means the Department of Education;
- 2.2. The “parties” is a reference to the Employer, Medmark Limited and the Department of Education as Joint Data Controllers under this agreement;
- 2.3. “The Data” means such personal information as is processed;
- 2.4. “GDPR” means the EU General Data Protection Regulation 2016/679;
- 2.5. The term “Article” refers to an article in the GDPR;
- 2.6. “Personal Data”, “Processing”, “Data Controller”, “Data Processor”, “Data Subject” and “Personal Data Breach” have the meanings assigned to them by Article 4 of the GDPR;
- 2.7. “Data Protection Acts” means the Data Protection Acts 1988 to 2018 and any amendments thereto;
- 2.8. “The Act” means the Education Act 1998 as amended;
- 2.9. “Employee” means teacher, special needs assistant and clerical officer/caretaker (employed under the 1978/79 Scheme) in approved posts funded by monies provided by the Oireachtas;
- 2.10. “Employer” means an Education and Training Board (ETB) for vocational schools/community colleges, community national schools and a Board of Management/Manager in the case of primary (excluding community national schools), voluntary secondary, community and comprehensive schools. The ETB or Board of Management/Manager may delegate as appropriate;
- 2.11. “Joint Data Controller” has the meaning given to it by Article 26 of the GDPR, which is where two or more Data Controllers jointly determine the purposes and means of processing;
- 2.12. “Occupational Health Service (OHS)” means a service which provides independent medical advice on occupational health to the Employer;
- 2.13. “Special Category Personal Data” has the meaning given to it by Article 9 of the GDPR, which is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the



purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation;

- 2.14. "On Line Claims System (OLCS)" means the system for recording absences and claiming substitution currently operating in primary, voluntary secondary, community and comprehensive schools.

3. Background and Introduction

Background, Subject Matter and Purpose of the Processing

- 3.1. The OHS is in place to provide employers with occupational health advice in relation to pre-employment medical assessments and an employee's medical fitness for work under the terms and conditions of the Sick Leave Scheme. The OHS provider, contracted by the Department, is the sole recognised provider of independent medical advice for employers.

As Data Controllers the Employer, Medmark Limited as the OHS provider and the Department are all assigned responsibilities by the GDPR relating to personal data held by them. Each Data Controller is expected to comply fully with all such responsibilities.

Irrespective of the terms of this Joint Data Controller Agreement, a data subject may exercise his/her rights in respect of and against each of the Data Controllers including, but not limited to, those rights contained in Articles 13 and 14 of the GDPR.

Where a data subject seeks to exercise his/her rights under the GDPR in relation to the OHS process from a particular Data Controller, that Data Controller shall deal with the request where it relates to the data held by that Data Controller's organisation.

The subject matter of the processing is personal data and special category personal data in relation to the OHS.

The purpose of the processing is to provide occupational health advice to employers which incorporates health management including Pre-Employment Health Assessments, Sickness Absence Assessments, Medical Assessments of Fitness for Work and Ill-Health Retirement Assessments including facilitation of Critical Illness Provision appeals and Ill-Health Retirement appeals for employees.



Type of Personal Data

- 3.2. The Employer holds personal data relating to the employee's Sick Leave record(s), the OHS referral record(s) and the OHS medical fitness to work report(s).

Medmark Limited holds personal data relating to assessments of the employee's medical fitness to work which includes pre-employment health assessments, sickness absences, assessment of applications for access to Critical Illness Provisions and Ill-Health Retirement assessments.

The Department holds the following data:

- (i) Personal data relating to the employee's Sick Leave records (available on the Online Claims System (OLCS)), and Ill-Health Retirement applications;
- (ii) Statistical data collected from Medmark Limited in the form of periodic reports. This data is anonymised, aggregate data, which cannot be attributed to a specific data subject.

The categories of personal data processed by the Employer are:

- Name
- Date of birth
- PPSN
- Residential address
- Contact details
- Sick Leave records (Medical Information/Special category personal data concerning health)

The categories of personal data processed by Medmark Limited are:

- Name
- Residential address
- Date of birth
- Medical information
- Special category personal data concerning health

The categories of personal data processed by the Department are:

- Name
- Date of birth
- PPSN
- Residential address
- Contact details
- Sick Leave records (available on the Online Claims System (OLCS))



Category of Data Subject

- 3.3. Data Subject has the meaning given to it by Article 4 of the GDPR, which is an identified or identifiable natural person. For the purposes of this agreement it is any person referred to the OHS.

4. Functions and obligations of the Employer

- 4.1. The Employer is responsible for:
- (i) Referring the employee to the OHS.
 - (ii) Seeking advice from the OHS.
 - (iii) Providing the employee with a copy of OHS referral and OHS 'Fitness to Work' report.
 - (iv) Providing the employee with data relating to the employee's Sick Leave record(s).
 - (v) The ETBs hold personal data relating to the employee's Ill-Health Retirement applications.

Therefore, in relation to the personal data processed in these circumstances, the Employer has the responsibility to comply with a data subject exercising his/her rights under the GDPR.

- 4.2. In accordance with Article 6(1) and Article 9(2) of the GDPR, the Employer in discharge of its obligations must have regard for:
- The Data Protection Acts; and
 - The GDPR.

5. Functions and obligations of Medmark Limited

- 5.1. Medmark Limited is responsible for (i) Processing referrals from employers and (ii) Determining appropriate retention criteria for personal data.

Therefore, in relation to the personal data processed in these circumstances, Medmark Limited has the responsibility to comply with a data subject exercising his/her rights under the GDPR.

- 5.2. In accordance with Article 6(1) and Article 9(2) of the GDPR, Medmark Limited in discharge of its obligations must have regard for:
- The Data Protection Acts; and
 - The GDPR.



6. Functions and obligations of the Department

- 6.1. The Department holds personal data relating to the employee's Ill-Health Retirement applications. Therefore, in relation to this personal data, the Department has the responsibility to comply with a data subject exercising his/her rights under the GDPR.
- 6.2. In accordance with Article 6(1) and Article 9(2) of the GDPR, Sections 7(1)c and 24(3) of the Education Act 1998, the Department in discharge of its obligations must have regard for:
 - The Data Protection Acts; and
 - The GDPR.

7. Joint Data Controllers

- 7.1. Article 26 of the GDPR defines a joint controller as follows: *“where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers”*. The Employer together with Medmark Limited and the Department are deemed to be Joint Data Controllers in respect of the data processed for the purpose(s) set out above. However, the respective roles and obligations of the parties differ and as such need to be defined.
- 7.2. The purpose of this agreement is to define the relationship and respective obligations to data subjects of the Employer, Medmark Limited and the Department. In so doing the parties have determined their respective responsibilities for compliance with the obligations under the Data Protection Acts and GDPR, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14 of the GDPR. The parties understand that a separate Privacy Notice by each party is to be in place for data subjects in relation to the OHS.
- 7.3. None of the parties to this agreement shall engage a data processor without the agreement of the other parties.

8. Obligations of the Employer, Medmark Limited and the Department as Joint Data Controllers

- 8.1. For the purposes of this agreement the parties jointly assume the role of “Data Controller” within the definition of the Data Protection Acts and shall have responsibility for ensuring compliance with the Data Protection



Acts and GDPR. Each party shall respond to requests made to that party from data subjects regarding the data held by that party. Without prejudice to the generality of the foregoing, the obligations of the parties under this agreement shall extend to:

Data compliance

8.1.1. Compliance with relevant sections of the Data Protection Acts in force from time to time.

8.1.2. Compliance with the GDPR.

Fair and Lawful Processing

8.1.3. Ensuring compliance with Section 71 of the Data Protection Acts in respect of fair and lawful processing and Articles 5 (principles relating to the processing of personal data), 6 (lawfulness of processing), 7 (conditions for consent) and 9 (processing of special categories of personal data) of the GDPR.

8.1.4. None of the parties to this agreement shall transfer the personal data to a third country outside of the European Economic Area without the express consent of the other parties.

Data Subject Rights - Dealing with Requests under Article 15 - 22 of the GDPR

8.1.5. Dealing with requests under Articles 15 - 22 of the GDPR regarding the rights of data subjects.

Transparency

8.1.6. Complying with Articles 13 and 14 of the GDPR in respect of information to be furnished to individual data subjects.

Accountability

8.1.7. Maintaining suitable records to demonstrate compliance with the GDPR and Data Protection Acts in accordance with Article 24 of the GDPR.

Data Security & Data Breach

8.1.8. The use of appropriate security measures for the data as per Article 32.



8.1.9. The notification of any data breach in accordance with Article 33 and where applicable, under Article 34.

8.1.10. Where a data breach occurs, the party whose breach of security has resulted in the breach shall inform the other party without undue delay and no later than 24 hours of becoming aware of the breach.

Consultation with the Data Protection Commission

8.1.11. The parties shall collaborate in respect of communication with the Data Protection Commission on the processing which is the subject of this agreement. This includes the obligation to consult under Article 36.

Data Protection Officer appointed under Article 37 of the GDPR

8.1.12. Contact details

The Data Protection Officer for Medmark Limited can be contacted at:

Data Protection Officer (DPO),
Medmark,
69 Lower Baggot Street,
Baggot Street Bridge,
Dublin 2,
D02 HW52.
Phone: 01-6761493.
Email: dataprotectionofficer@medmark.ie

The Data Protection Officer for the Department can be contacted at:

Data Compliance & Support Section,
Department of Education,
Cornamaddy,
Athlone,
Co. Westmeath,
N37 X659.
Phone: +353(0)90 648 3908
Email: dpo@education.gov.ie



Disclosures

- 8.1.13. The parties will not disclose any of the personal data which they process unless there is a legal basis for such disclosures and, subject to any regulations restricting the data subject's rights under the Data Protection Acts, the data subjects will be informed by the parties of these disclosures in advance.

Data Storage

- 8.1.14. Each party shall determine the retention period which is necessary for any personal data which it processes.

9. Administrative Matters

- 9.1. The parties as Joint Data Controllers, shall:
 - 9.1.1. Assume liability for all Data in respect of Sections 141, 142 and 143 of the Data Protection Acts, Articles 79 and 82 of the GDPR and the Law of Torts.
 - 9.1.2. Deal with all requests under Chapter 4 of the Data Protection Acts regarding rights and the restriction of rights of data subjects and Articles 13 to 22 of the GDPR. Responses thereto shall be final, subject to review only by the Data Protection Commissioner or Courts as appropriate.
 - 9.1.3. A party that is demonstrably in breach of one of its obligations under the agreement, thus causing the other parties to be held liable by a third party for any damage, costs or interest payments it has incurred, shall indemnify the other parties against the claims brought by the third party and reimburse any expenses the other parties may incur.

10. Contact Details for Data Subjects

- 10.1. Data subjects wishing to make contact with the data controllers can:

Contact the Employer i.e. the relevant recognised Primary, Secondary, Community and Comprehensive School or the Chief Executive of the relevant Education and Training Board.



Contact Medmark Limited at:

Data Protection Officer (DPO),
Medmark,
69 Lower Baggot Street,
Baggot Street Bridge,
Dublin 2,
D02 HW52.
Phone: 01-6761493.
Email: dataprotectionofficer@medmark.ie

Contact the Department at:

Pension Unit,
Department of Education,
Cornamaddy,
Athlone,
County Westmeath,
N37 X659.
Phone: 090 648-4189
Email: pensions@education.gov.ie

11. Duration of Agreement

- 11.1. Save for any review undertaken, this Joint Data Controller Agreement will remain in force between the Employer, Medmark Limited and the Department for the duration of the Occupational Health Service Contract. The agreement will be reviewed at the request of any party.

James Walsh

Principal Officer

Teacher/SNA Terms and
Conditions Section

01 February 2024

Tara Carton

Principal Officer

Data Compliance & Support Section