Coroners and Justice Bill - data sharing

Summary

The Coroners and Justice Bill published last month includes four clauses that would amend the Data Protection Act 1998. These clauses contain measures to allow the government to authorise the widespread sharing of data across Whitehall departments, throughout the public sector and abroad. The proposals have attracted considerable political opposition. This paper seeks Office Holders’ views on the approach the LGA should adopt to the data sharing proposals in the Coroners and Justice Bill.

Recommendations

That in light of the political debate around data sharing, the potential impact on the reputation of the local authority sector and the financial implications associated with the proposals in the Coroners and Justice Bill, LGA Office Holders agree to the LGA:

- opposing the inclusion of the existing data sharing provisions in the Coroners and Justice Bill;
- lobbying for changes to the Local Government Finance Act 1992 to allow the sharing of council tax data with the consent of the individual concerned; and
- calling for clear guidance on the sharing of information from the Information Commissioners’ Office.

Action

1. LGA officers to action as directed.

Contact Officer: Mark Norris
Phone No: 020 7664 3241
Email: mark.norris@lga.gov.uk
Coroners and Justice Bill - data sharing

The data sharing provisions of the Coroners and Justice Bill

1. The Coroners and Justice Bill introduced into the House of Commons on 14 January sets out to reform the coroners service, and makes a range of changes to criminal offences and the way the criminal justice system works. Much of the Bill is devoted to these issues. However the Bill also includes four clauses at Part 8 of the Bill which would amend the Data Protection Act 1998. Of these clauses, one, around data sharing, could have a considerable impact on local government.

2. Clause 152 of the Bill provides a new scheme for data sharing, and was introduced following the Data Sharing Review report which was published in July 2008. This review, led by the Information Commissioner and the Director of the Wellcome Trust, was, amongst other things, asked to make recommendations on how data sharing policy could be developed. The review recommended that where there was a legal barrier to data sharing a new statutory fast-track procedure should be created, with the Secretary of State having a power by Order to remove or modify any barrier to data sharing.

3. It is this recommendation which Clause 152 seeks to give legislative effect to. As such Clause 152 would give wide powers to ministers (including ministers in the devolved administrations) to allow the sharing of information, including by modifying primary legislation. It is the wide ranging nature of ministers’ ability to order data sharing to take place that has attracted political controversy. As a result at the Second Reading debate on 26 January there was considerable strength of feeling against the data sharing provisions.

Benefits of to local government of the data sharing provisions

4. As the LGA response to the consultation held by the Data Sharing Review, pointed out there are benefits to local authorities from being able to use and share personal information. These include:

- Being able to improve the quality of service received by residents – this not only includes the council’s own services but data sharing would also assist in linking together services provided by a range of public services;
- Enabling better planning of service delivery by for example being better able to predict demand for services, such as significant migration into an area between censuses;
- Achieving better value for money from services, and reduced costs from having to ask for or provide personal information;
- Being able to use shared data to encourage the take up of services or benefits by sections of their community, such as free school meals; and
- Reducing the number of times residents have to provide their councils with personal information.

5. Data sharing, and relevant legislation has on occasion been seen as a barrier in tackling certain types of crime with key partners such as health and police unable to agree on a joint approach with sensible protocols. The far reaching data sharing provisions in the Coroners and Justice Bill therefore offer councils the prospect of being able to deliver better and more efficient and effective services to their residents.

**Pitfalls for local government arising from the data sharing provisions**

6. However there would be major **risks** in supporting the provisions as they stand, not least to the reputation of the local government sector. There could also be a substantial financial impact on local authorities if the provisions proceed unamended.

7. The data sharing provisions in the Bill are politically controversial and are particularly opposed by civil liberties organisations. Issues that have arisen around the second reading of the bill highlighted the impact the bill would have on the duty of confidentiality owed by the state to individuals, the fear that the provisions would allow the sharing of data with foreign governments or organisations, and that the BMA has already warned that medical records could be shared not only with public authorities but employers and the insurance industry. As the bill proceeds through Parliament, such fears are likely to spread more widely amongst the public and this is likely to make councils’ residents less willing to provide councils with personal information for fear of passing it on to a range of other agencies. This will make the work of local authorities significantly more difficult.

8. Local authorities’ ability to investigate what individuals are doing has attracted a good deal of negative coverage over the last year, with the media actively looking for examples of where they believe councils have abused the Regulation of Investigatory Powers Act. If the sector is seen to be supporting the data sharing provisions there is every risk that the media will seek to portray this as councils seeking unnecessary and intrusive additional powers. This will therefore undermine work to rebuild the reputation of the sector.

9. Such criticism would be difficult to defend when councils and other public services are in fact already able to share data. While the Data Protection Act does not empower data sharing it does not prevent it either – rather it sets out conditions under which even personal data can be shared. This includes the ability to share even sensitive data (such as health, political opinions and religious beliefs) where it
would prevent or detect a crime, or is necessary to protect a person’s vital interests (which includes a risk of significant harm to life).

10. Some councils have recognised this and are already finding trusted ways if an individual gives consent to sharing data so they can provide better services to residents. Home Shield, a scheme run by Suffolk County Council, sees members of neighbourhood policing teams assess vulnerable residents needs and the form that is completed (but only signed once) provides consent to the council sharing the information with a range of services to assist the individuals concerned.

11. There could be considerable financial costs associated with directions from any minister to local government to share data more widely. Most typically ministers would be looking to local government to share data with central government departments. The requirements to share data could mean trying to link central government and councils IT systems, which could have substantial costs given the range of different software and equipment used by councils.

**Alternative proposals to the data sharing provisions**

12. Given the likely impact on the sector, the LGA could oppose their introduction, and communicate this position swiftly to the sector in a high profile way through media work. Councils would see the LGA proactively highlighting an emerging legislative difficulty, looking after their interests and genuinely adding value at a national level.

13. Opposing the data sharing provisions in the Bill would also place the local government sector in tune with public concerns about the sharing and security of data. This is especially important when local authorities hold so much information about their residents and some of the most vulnerable members of their communities in particular. As corporate parents, councils hold the life records of children in care, as well as detailed information on vulnerable children. They also hold sensitive details of many of their elderly residents, as well as those with mental health problems. These provisions could dictate that councils share this sensitive information with the police and other agencies – which will place councils in a very uncomfortable position. Given the strong arguments that the data sharing provisions are in any case unnecessary the local government sector does not need to support such controversial provisions.

14. Instead of the provisions in the Bill there are two ‘asks’ the LGA could make of government which would assist in this area. There are legislative restrictions on local authorities being able to share personal information even if it has the consent of the individual concerned. Most importantly the Local Government Finance Act 1992 states that council tax data can only be used for the purpose for which it is intended. Council tax data is one of the more accurate sets of data available to local authorities, yet it cannot be used to promote other local government services. A
change in the 1992 Act to allow councils to share council tax data with the consent of the individuals involved would be of benefit to councils.

15. A decade after the Data Protection Act was introduced there is still confusion over what can be shared and in what circumstances, even though considerable guidance has been produced. There is a case for the Information Commissioner’s Office to produce a definitive guide to what can be currently done on data sharing under the Data Protection Act and any other relevant statutes. This would be more useful than simply widening the powers.

Recommendations

16. That in light of the political controversy surrounding the data sharing provisions, the potential impact on the reputation of the local authority sector and the financial implications associated with the proposals in the Coroners and Justice Bill, LGA officers recommend that the LGA: -

- opposes the inclusion of the existing data sharing provisions in the Coroners and Justice Bill;
- lobbies for changes to the Local Government Finance Act 1992 to allow the sharing of council tax data with the consent of the individual concerned; and
- calls for clear guidance on the sharing of information from the Information Commissioners’ Office.

Financial Implications

17. There will be minimal costs associated with any lobbying and campaigning against the data sharing proposals but these can be met from existing LGA Group budgets and resources.

Implications for Wales

18. The data sharing provisions in the Coroners and Justice Bill cover England and Wales. LGA officers have shared this report with WLGA officers and will feed back at the meeting on any comments from WLGA.

Contact Officer: Mark Norris
Phone No: 020 7664 3241
Email: mark.norris@lga.gov.uk