

**From:** Information Commissioner's Office <newsletter@ico.org.uk>  
**Sent:** 04 August 2016 16:43  
**To:** Steven Johnston  
**Subject:** Latest news from the ICO - August 2016

Welcome to the ICO's newsletter for August

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Information Commissioner's Office



## Hello from Elizabeth Denham

It's a pleasure to be addressing you all though the ICO's monthly e-newsletter as my third week as Information Commissioner comes to a close.

I've moved to Cheshire from Canada, where I just completed a six year term as the Information and Privacy Commissioner for British Columbia.

Over more than a dozen years in this sector, I've seen the pace of the privacy regulator job quicken, and the scope of the work grows wider every day. Access to information and privacy touch nearly all aspects of public and commercial life and our work is at the centre of some of the most compelling issues of our time. Our work makes a difference to citizens and consumers, employees and other rights holders.

I've already seen there's a lot happening this side of the pond. I'm becoming more familiar with the work of the ICO, meeting staff in our Wilmslow office and have just had a visit to the ICO's Edinburgh office. In



the coming weeks I'll be continuing to get to grips with the challenges ahead as well as visiting our Cardiff and Belfast offices.

Whilst I've been adjusting to a new job and new home (I thought I spoke the language but need to keep handy a 500 page tome of local idioms), I'm very aware that I'm not the only one facing changes at the moment. The result of the EU referendum and its impact on data protection reforms will undoubtedly create uncertainty, as any period of flux does. It's clear to me though that the UK is well equipped to navigate the changes ahead successfully.

Data protection is a team sport. Effective regulation requires engagement with the public sector, with industry, with civil society and with the public at large. We all have an important role to play in this, and I look forward to the opportunity to work with you during my time here.

## Headlines

### In the spotlight

- [Citizen Reference Panel](#)
- [History of the ICO](#)
- [Chat with helpline staff online](#)

### Data protection

- [Webinar for law firms](#)
- [UK families still at risk from baby monitor hacking style attacks](#)
- [The what, why and how of transferring data to the USA](#)
- [Have you tried our self-assessment toolkit?](#)
- [Named person scheme](#)
- [Football club ordered to respond to subject access request](#)
- [Records management for the public sector webinar](#)
- [New book on data anonymisation](#)
- [Changes to ICO management team](#)

## Freedom of information

- [Trafford Council joins Met Police on FOI monitoring list](#)
- [Prohibitions on disclosure: new ICO guidance](#)
- [Section 26 – Defence](#)

## Privacy and electronic communications regulations

- [ICO takes action against 'sugging' firm](#)

## In the spotlight



### **Citizen Reference Panel**

The ICO has been developing its understanding of people's attitudes to information rights issues through a [citizen reference panel](#). The panel involves a focus group made up of members of the public who are asked for their opinions and to discuss a range of issues and topics. These meetings allow the ICO to gain insight from the public on the information rights landscape.

### **History of the ICO**

Information rights have come a long way since Eric Howe became the first Data Protection Registrar in September 1984. The ['History of the ICO' section of our website](#) has been updated to reflect the organisation's new Information Commissioner. It's worth a read if you're new to the ICO or would like more information on our background.

### **Chat with helpline staff online**

You can now talk to the ICO online as well as by telephone. Our new live chat service is one of the fastest ways to get in touch with an ICO adviser - offering a full transcript of your conversation, including any advice we give. Customers have told us that this is particularly useful when they want to share our advice with a colleague, or to keep a copy to refer back to. You can use [the Live Chat service](#) Monday to Friday between 9am and 5pm.



## Data protection

(DP)

### Webinar for law firms

Did you miss our webinar for law firms? We hosted it last month to help law firms with their data protection responsibilities, discussing information risks for the legal sector and how the ICO can help improve practices. A [recording of the webinar is now available to view on YouTube](#) for those who weren't able to attend on the day.

### UK families still at risk from baby monitor hacking style attacks

[Lessons have not been learned from the realisation that a Russian website was providing links to access baby monitor cameras](#), the ICO has warned. A blog by ICO technology manager Dr Simon Rice advises that the [public must act to protect themselves when using Internet of Things devices](#).

### The what, why and how of transferring data to the USA

Interim Deputy Commissioner Steve Wood has [blogged on the new EU-US Privacy Shield](#), which became operational on 1 August. The European Commission has issued its formal decision that the Privacy Shield provides adequate protection to allow personal data to be transferred to the US, taking on the baton of Safe Harbor.

### Have you tried our self-assessment toolkit?

Hundreds of you have used our self-assessment toolkit to check your data protection practices since its launch in January. For those of you who haven't tried it yet, [this short video explains more](#).

### Named Person scheme

There was a [Supreme Court judgement](#) last week about plans for a 'Named Person' scheme covering children and young people in Scotland. Following this, the Information Commissioner's Office issued the following statement.

Dr Ken Macdonald, Head of ICO Regions, said: "We will be working



sector to ensure that the concerns of the Supreme Court are adequately addressed. In the meantime, practitioners should be reassured that information sharing for child protection purposes is not affected by the judgment and that they should continue to share such information following best practice within the framework of the Data Protection Act and other law."

### **Football club ordered to respond to subject access request**

The ICO has issued [an enforcement notice ordering Nottingham Forest Football Club](#) to respond to a subject access request (SAR). The request was made last November and, when the club didn't respond, the ICO ruled it had failed to comply with section 7 of the Data Protection Act. Nottingham Forest now has 30 days to respond to the SAR or risk prosecution. There's [more information about dealing with SARs](#) available on our website.

### **Records management for the public sector webinar**

Our next webinar will cover records management for the public sector. It'll include top tips, and should be essential viewing for anyone working in public records and information management. The webinar will be on Thursday 8 September at 12pm. More details will follow next month, though you can [sign up before then here](#).

### **New book looking at data anonymisation**

A recently published book, the Anonymisation Decision Making Framework, is the first serious attempt to unify technical and legal aspects of anonymisation. The book was produced by the UK Anonymisation Network (UKAN). The Network's setup was initiated and funded by the ICO in 2012. It provides a comprehensive guide to anonymisation in practice and has been endorsed by Elizabeth Denham, the new Information Commissioner. Commenting on the book she said: "This authoritative and accessible decision-making framework will help the information professional to anonymise personal data effectively.

"The framework forms an excellent companion piece to the ICO's code of practice." [It's available here in open book form.](#)

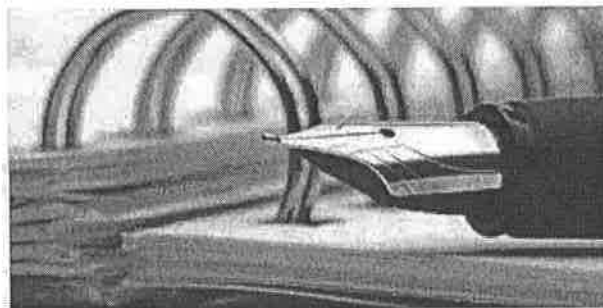
### **Changes to ICO management team**

As well as welcoming Elizabeth Denham as the new Information Commissioner, there's been another significant change at the ICO. Steve Wood has been made Interim Deputy Commissioner and will be responsible for the policy side of the organisation building on his experience as the ICO's head of policy delivery.

Commissioner (Wales), who retired in July. Dr Ken Macdonald now has overall responsibility for our offices in Belfast, Cardiff and Scotland. Day-to-day management of all functions of the offices falls to the three regional managers, Shauna Dunlop (Northern Ireland), Dave Teague (Wales) and Maureen Falconer (Edinburgh).

## Freedom of information

(FOI)



### **Trafford Council joins Met Police on FOI monitoring list**

The ICO has announced that Trafford Council will be monitored over the timeliness of its responses to freedom of information requests.

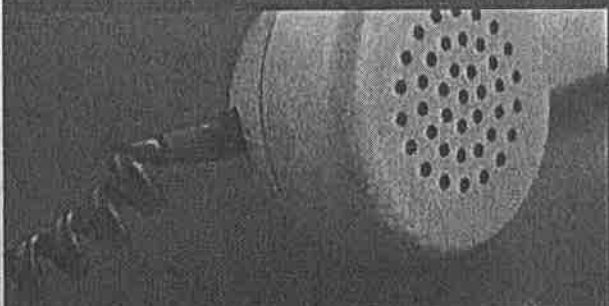
The council will join the Metropolitan Police Service in having its performance reviewed, after the regulator identified a significant number of cases not being responded to within the statutory time limit of 20 working days.

### **Prohibitions on disclosure: new ICO guidance**

The ICO has published new guidance on section 44 of Freedom of Information Act. The section provides an exemption if disclosure is prohibited under other legislation, would be incompatible with an EU obligation, or would be in contempt of court. It includes examples where disclosure wasn't allowed from our own casework.

### **Section 26 – Defence**

The ICO has recently published replacement guidance on section 26 – Defence. This is the part of the FOIA that covers how information can be withheld if it's disclosure might prejudice the defence of the British Islands. The guidance explains what information is covered by section 26 and includes recent tribunal decisions to show how the exemption applies in practice.



## Privacy and electronic communications regulations

(PECR)

### ICO takes action against 'sugging' firm

Passing off nuisance calls as legitimate market research "will not wash", the ICO's head of enforcement has said. Steve Eckersley's warning came as the ICO issued a stop order against a company that falsely claimed it was phoning people as part of a lifestyle survey – a practice known as "sugging".

## Enforcement action



**Prosecutions:** Clarity Leeds Ltd

**Enforcement notices:** Change and Save Ltd, Consumer Finance Claims Ltd, Nottingham Forest Football Club

**Undertakings:** Northern Health & Social Care Trust

More information on these breaches can be found on the enforcement section of our website.

Previous newsletters can be viewed on our website.

Further information

For more information about the ICO, subscribe to our E-newsletter at [www.ico.org.uk](http://www.ico.org.uk). The ICO is also on Twitter, Facebook and LinkedIn.

A list of our latest job vacancies can also be found at: <http://www.ico.jobs/>.

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Information Commissioner's Office  
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**Steven Johnston**

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**From:** Anya Burgess  
**Sent:** 28 July 2016 14:10  
**To:** Elizabeth Denham; Steve Wood; Simon Entwisle  
**Subject:** Breaking news

Dear Liz, Steve and Simon,

One story to be aware of this lunchtime:

Judges at the UK's highest court have ruled against the Scottish government's Named Person Scheme. The system would appoint a named person to ensure the well-being of every child. We're disappointed with the judgment because we had offered advice and they had addressed our concerns. The ruling said the system needed more work before it could be given the go-ahead.

Ken has been speaking to the Scottish government this morning and we are working on a line.

<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-36903513>



**Anya Burgess**  
**Lead Communications Officer**

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

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**Steven Johnston**

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**From:** Helen Davies  
**Sent:** 28 July 2016 16:38  
**To:** Press Office Copy All  
**Subject:** ICO statement on Named Person scheme

Hi all,

Following the Supreme Court judgement today about the 'Named Person' scheme, the Information Commissioner's Office has issued the following statement:

Ken Macdonald, Head of ICO Regions, said: "We will be working with the Scottish Government and agencies within the children's sector to ensure that the concerns of the Supreme Court are adequately addressed. In the meantime, practitioners should be reassured that information sharing for child protection purposes is not affected by the judgment and that they should continue to share such information following best practice within the framework of the Data Protection Act and other law."

Thanks

Helen

**Helen Davies**  
**Lead Communications Officer**

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## Steven Johnston

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**From:** Elizabeth Denham  
**Sent:** 28 July 2016 18:10  
**To:** Robert Parker  
**Subject:** Re: PA news feed: NAMED PERSON SUPPORTERS CALL ON MINISTERS TO FIX POLICY

Thanks Robert - good coverage. I look forward to talking to Ken about this case while I am on Scotland tomorrow - and to get the context and background of the quote we made, which seems to be about reassuring agencies about their ability to share data instead of the lack of controls and proportionality of the NP legislation in light of the DP Act Best Liz

Elizabeth Denham  
01625 545711

> On 28 Jul 2016, at 16:53, Robert Parker <Robert.Parker@ico.org.uk> wrote:  
>  
> Liz,  
>  
> PA News are the UK's leading news agency are they are used as a source  
> by all major UK media print and broadcast outlets. They run a live  
> 24/7 news feed which you won't be surprised to know we make a key  
> target for our news releases and statements. This afternoon, they are  
> running the story about the Supreme Court's ruling over the Scottish  
> Governments named person scheme and ICO's quote is now part of the  
> feed, regards, Robert  
>  
> NAMED PERSON SUPPORTERS CALL ON MINISTERS TO FIX POLICY  
>  
> PA COURTS Children Reaction  
> 28-Jul-2016 16:40:51  
> By Lynsey Bews, Political Reporter, Press Association Scotland  
>  
> The Scottish Government has been urged to act in making any necessary changes  
to its named person scheme.  
>  
> Reacting to the Supreme Court ruling - which stated the legislation is currently  
"incompatible" with European human-rights laws - organisations and political parties  
supportive of named person said ministers must take steps to fix the policy and  
regain public trust.  
>  
> Those opposed to the legislation hailed the ruling as a "stunning victory" and called  
for it to be ditched entirely.  
>  
> Labour's education spokesman Iain Gray said the handling of the scheme had been  
a "shambles".  
>

> Mr Gray added: "It now falls to SNP Deputy First Minister John Swinney to clarify how he will regain the trust and confidence of the Scottish public in the scheme.

>

> "Simply pressing on after minor amendments to the legislation will not be good enough. We need to see a complete re-examination of the guidance and regulations."

>

> Scottish Greens education spokesman Ross Greer said the required changes give the Scottish Government an opportunity to "build public confidence"

> in the legislation.

>

> Mr Greer said: "As I told the Scottish Parliament last month, the Scottish Government must do more to build public confidence and better explain what named person means in practice.

>

> "They now have an opportunity to do that when the Supreme Court's necessary changes are made to the legislation."

>

> Children's Commissioner Tam Baillie said: "The Scottish Government and Scottish Parliament has now been given 42 days to 'correct the defects'

> identified by the court and my office stands ready to work with them to do this.

>

> "As part of this work, Scottish Government must engage with children and young people about the issue of sharing confidential, sensitive and personal information."

>

> Martin Crewe, director of Barnardo's Scotland, said: "We look forward to working with the Scottish Government and other stakeholders to ensure the named person service works effectively to support children and young people in Scotland."

>

> Royal College of Nursing (RCN) Scotland director Theresa Fyffe said the Scottish Government must act to provide clarity and "make the necessary legislative amendments, so that the health visitors and teachers who have been working to take up the named person role or who are already implementing it are not left in limbo and are given clear guidance as soon as possible".

>

> Larry Flanagan, general secretary of the EIS teaching union, said:

> "Whilst the EIS has been broadly supportive of the principle of the named person service, the court ruling today on information-sharing concerns will require further thinking on the part of Scottish Government.

>

> "We would urge the government to review, also, the level of resources being provided to support scheme implementation."

>

> Dr Gordon Macdonald, of Christian charity CARE, one of the four co-petitioners in the legal challenge, said: "This is a stunning victory for parents and families across Scotland. We are delighted judges at the UK's highest court have backed our case.

>

> "Given the very real concerns about how the scheme was going to be implemented, it is doubly welcome the Supreme Court has today dealt this blow to the flawed named person scheme.

>



> "While well-intentioned, the scheme was ill-conceived and represented an attack upon the rights of parents."

>

> Ukip Scotland leader David Coburn said: "This is a major victory for Ukip in Scotland and it will be a huge relief to concerned parents across Scotland that the Supreme Court agrees with us and has sided with the people against the nanny state government headed by the SNP."

>

> The Family Education Trust, one of the four charities which brought the case to the Supreme Court, welcomed what it said was the court's "recognition that the named person scheme represents a disproportionate intrusion into family life and undermines parents".

>

> Director Norman Wells said: "The UK Supreme Court is absolutely right to recognise the vital role of the family in a free society."

>

> "It is not the function of the state to determine what constitutes optimal parenting or to regulate how every child is brought up and educated."

>

> "At a time when there is an alarming and widespread deference to expert opinion at the expense of parents, legislators and policymakers both north and south of the border would do well to pay careful attention to the wise and perceptive comments of the Supreme Court judges."

>

> A spokesman for local authority body Cosla said: "This is a complex issue and we are taking the opportunity to study the Supreme Court decision."

>

> "However, what we can say immediately is that the aims and intentions of the named person scheme are laudable in their intent and Cosla remains committed to working in partnership with the Scottish Government to deliver on these intentions for the children and young people who will benefit."

>

> Ken Macdonald, Assistant Information Commissioner for Scotland, said:

> "We will be working with the Scottish Government and agencies within the children's sector to ensure that the concerns of the Supreme Court are adequately addressed."

>

> "In the meantime, practitioners should be reassured that information-sharing for child-protection purposes is not affected by the judgment and that they should continue to share such information following best practice within the framework of the Data Protection Act and other law."

>

> ends

>

>

>

**Steven Johnston**

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**From:** David Teague  
**Sent:** 28 July 2016 10:18  
**To:** [REDACTED] Helen Thomas  
**Subject:** FW: Supreme Court

For info

---

**From:** Kenneth Macdonald  
**Sent:** 28 July 2016 10:05  
**To:** Press Office (external)  
**Cc:** Simon Entwisle; Edinburgh; David Teague; Shauna Dunlop  
**Subject:** RE: Supreme Court

Disappointing result. The Supreme Court has judged that the information sharing proposed under the Act is not proportional and has given the Scottish Govt six weeks to amend the legislation. In other words, the general principle of the scheme is seen to be valid but tighter controls are required.

<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-36903513>

<https://www.supremecourt.uk/cases/uksc-2015-0216.html>

Ken Macdonald

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Belfast	028 9027 8557
Cardiff	029 2067 8400

---

**From:** Press Office (external)  
**Sent:** 28 July 2016 09:23  
**To:** Kenneth Macdonald  
**Subject:** RE: Supreme Court

Thanks Ken. Yes, if you could keep us posted that would be good.

Helen Davies  
Lead Communications Officer

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**From:** Kenneth Macdonald  
**Sent:** 27 July 2016 21:29  
**To:** Press Office (external)

**Cc:** Maureen Falconer  
**Subject:** Supreme Court

The Supreme Court are due to rule on the Named Person scheme of the Scottish Govt at 9:45 tomorrow morning (Thursday). Three issues are under consideration, two of which are directly relevant to us :

1. Whether the provisions of the 2014 Act concerning information sharing and disclosure of information associated with the exercise of the named person functions are compatible with EU law.
2. Whether the provisions of the 2014 Act concerning information sharing and disclosure of information associated with the exercise of the named person functions relate to matters reserved to the Westminster Parliament under the Scotland Act 1998.

The third issue relates to the compatibility of the scheme with the common law and the ECHR.

The petitioners' case has already been rejected by the Outer House of the Court of Session and then again by the Inner House on Appeal. However, there is a degree of concern by the Scottish Govt that at the very least it will come in for criticism and, at worst, parts of the Petition will be upheld. Depending on that outcome, we may also be criticised by association as we have advised on the DP aspects. Hence there could be media interest following it.

We're intending to watch the hand down of the judgment when it is streamed live. We'll advise you of the judgment when we know so we can prepare responses if necessary.

Ken

Ken Macdonald  
Head of ICO Regions

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Sent from my iPad

## Steven Johnston

---

**From:** John Gilchrist  
**Sent:** 16 June 2016 10:43  
**To:** Good Practice  
**Subject:** Scottish Named Persons Scheme

Might not be relevant to everyone, but if anybody has audit work in Scotland over the next few months and you're doing data sharing this will be a pretty big deal!

<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-35752756>



John Gilchrist  
Lead Auditor

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

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**Steven Johnston**

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**From:** David Freeland  
**Sent:** 04 August 2016 16:56  
**To:** Laura Middleton  
**Subject:** RE: ICO statement on Named Person scheme

Hi Laura

I don't particularly blame you for not wanting to wade through the whole judgment. You might find the three page [press summary](#) easier to digest. Alternatively, I put up a very short precis of the likely impact for the ICO on the sector pages. In short, we may get complaints that non-statutory pilot schemes were either sharing personal information unlawfully by lacking sufficient conditions for processing, or disproportionately in terms of principles 2 and 3.

We'll look to do the rounds of the TCGs in the next month and hopefully have some news of what the Scottish Government plans to do about the legislation.

**David Freeland**  
**Senior Policy Officer**

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**From:** Laura Middleton  
**Sent:** 04 August 2016 10:54  
**To:** David Freeland  
**Subject:** FW: ICO statement on Named Person scheme

Hi David

I was sent this last week and haven't the foggiest what it relates to – nor do I have the time or inclination to read the whole judgment!

If you think this is something those of us that deal with local government/children's services need to know about, could you put it on the agenda for the next local government TCG, and give us an overview at the meeting?

Thanks

Laura



Laura Middleton  
Team Manager

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**From:** Helen Davies  
**Sent:** 28 July 2016 16:38  
**To:** Press Office Copy All  
**Subject:** ICO statement on Named Person scheme

Hi all,

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Thanks

Helen

Helen Davies  
Lead Communications Officer

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## Steven Johnston

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**From:** Kirsty Keogh  
**Sent:** 01 August 2016 09:05  
**To:** Elizabeth Denham; Simon Entwisle; Steve Wood  
**Cc:** Press Team (internal)  
**Subject:** Media monitoring top up

Dear Liz, Simon and Steve,

David is sending a separate email about the Named Person scheme and coverage in the Mail on Sunday (Scotland).

Below are other blogs and articles from the weekend that are of note.

### **IAAP**

Latest in the VKIvs Amazon case: The court held that " ... the processing of data ... is governed by the law of the Member State in whose territory that establishment is situated."

<https://iapp.org/news/daily-dashboard/>

### **Buzzfeed**

Owen Smith seems to be sending out texts in the early hours to promote his Labour leadership campaign. We've had a few comments posted via Twitter and we'll pass them on to casework.

[https://www.buzzfeed.com/jamieross/people-are-furious-that-owen-smith-woke-them-up?utm\\_term=.ub523A5E1#.cagONQV2o](https://www.buzzfeed.com/jamieross/people-are-furious-that-owen-smith-woke-them-up?utm_term=.ub523A5E1#.cagONQV2o)

Kirsty Keogh  
Team Manager (Communications)

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## Steven Johnston

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**From:** David Teague  
**Sent:** 02 August 2016 15:21  
**To:** Kenneth Macdonald  
**Subject:** FW: August newsletter  
**Attachments:** August newsletter 2016.docx

Hi Ken

A few ideas on this...

The news about Anne fits in with Liz's introduction nicely but ongoing arrangements might be better served by a dedicated paragraph with title? If so then we could add something like "An update on arrangements for the Wales office can be found later in this newsletter" and then explain a bit more about our new roles (and maybe Mo & Shauna too?).

Failing that, just an extra line in the existing para will get the job done just as well and might be easier.

Dave

---

**From:** Anya Burgess  
**Sent:** 02 August 2016 14:36  
**To:** Andy Curry; Robert Parker; Ian Inman; Philip Davison; Leanne Doherty; Elizabeth Hogan; David Teague; Maureen Falconer; Shauna Dunlop; Kenneth Macdonald  
**Subject:** August newsletter

Hi all,

Can you take a look at the August newsletter which is attached.

It's been edited in the press office so if you can just fact check and let me know if there are any changes by Wednesday (tomorrow) at 12pm.

It's due to be published on Thursday.

Many thanks



Anya Burgess  
Lead Communications Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,  
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DRAFT

Information Commissioner's Office (ICO)  
E-newsletter, August 2016

Welcome

This month the ICO welcomed its new Information Commissioner Elizabeth Denham. She will serve a five year term, after holding senior positions in privacy regulation in Canada over the last 12 years. Since 2010 she has been the Commissioner at the Office of the Information and Privacy Commissioner for British Columbia, Canada.

Ms Denham said: "I am delighted to have taken up this position and am excited about the challenges ahead. I look forward to working with staff and stakeholders to promote openness by public bodies and data privacy for individuals."

We also said goodbye to Anne Jones, our Assistant Commissioner for Wales, who retired in July. Dr Ken Macdonald is now responsible for our offices in Wales, Scotland and Northern Ireland.

Headlines

In the spotlight

- Citizen Reference Panel
- History of the ICO
- Website live chat

Data Protection

- Webinar for law firms
- UK families still at risk from baby monitor hacking style attacks
- Article 29 Working Party statement on EU-US Privacy Shield
- Have you tried our self-assessment toolkit?
- Named person scheme
- Football club ordered to respond to subject access request
- Records management for the public sector webinar
- New book on data anonymisation

Freedom of Information

- Trafford Council joins Met Police on FOI monitoring list

Electronic marketing

- ICO takes action against 'sugging' firm

In the spotlight

### **Citizen Reference Panel**

The ICO has been developing its understanding of people's attitudes to information rights issues through a [citizen reference panel](#). The panel involves a focus group made up of members of the public who are asked to discuss a range of issues and topics. These meetings allow the ICO to gain insight from the public on the information rights landscape.

### **History of the ICO**

Information rights have come a long way since Eric Howe became the first Data Protection Registrar in September 1984. The ['History of the ICO' section of our website](#) has been updated to reflect the organisation's new Information Commissioner. It's worth a read if you're new to the ICO or would like more information on our background.

### **Chat with helpline staff online**

You can now talk to the ICO online as well as by telephone. Our new live chat service is one of the fastest ways to get in touch with an ICO adviser - offering a full transcript of your conversation, including any advice we give. Customers have told us that this is particularly useful when they want to share our advice with a colleague, or to keep a copy to refer back to. You can use [the Live Chat service](#) Monday to Friday between 9am and 5pm.

Data Protection

### **Webinar for law firms**

Did you miss our webinar for law firms? We hosted it last month to help law firms with their data protection responsibilities, discussing information risks for the legal sector and how the ICO can help improve practices. A [recording of the webinar is now available to view on YouTube](#) for those who weren't able to attend on the day.

### **UK families still at risk from baby monitor hacking style attacks**

[Lessons have not been learned from the realisation that a Russian website was providing links to access baby monitor cameras](#), the ICO has warned. A blog by ICO technology manager Dr Simon Rice advises that the public must act to protect themselves when using Internet of Things devices.

### **Article 29 Working Party statement on EU-US Privacy Shield**

As part of the European Article 29 Working Party, the ICO was involved in issuing [the latest statement from the group on the decision of the European Commission on the EU-US Privacy Shield](#). The statement welcomes the improvements brought by the Privacy Shield mechanism compared to the Safe Harbor decision, but expressed concerns and asks for clarifications in some areas.

**Have you tried our self-assessment toolkit?**

Hundreds of you have used our self-assessment toolkit to check your data protection practices since its launch in January. For those of you who haven't tried it yet, [this short video explains more](#).

**Named Person scheme**

There was [a Supreme Court judgement](#) last week about plans for a 'Named Person' scheme covering children and young people in Scotland. Following this, the Information Commissioner's Office issued the following statement. Dr Ken Macdonald, Head of ICO Regions, said: "We will be working with the Scottish Government and agencies within the children's sector to ensure that the concerns of the Supreme Court are adequately addressed. In the meantime, practitioners should be reassured that information sharing for child protection purposes is not affected by the judgment and that they should continue to share such information following best practice within the framework of the Data Protection Act and other law."

**Football club ordered to respond to subject access request**

The ICO has issued [an enforcement notice ordering Nottingham Forest Football Club](#) to respond to a subject access request (SAR). The request was made last November and, when the club didn't respond, the ICO ruled it had failed to comply with section 7 of the Data Protection Act. Nottingham Forest now has 30 days to respond to the SAR or risk prosecution. There's [more information about dealing with SARs](#) available on our website.

**Records management for the public sector webinar**

Our next webinar will cover records management for the public sector. It'll include top tips, and should be essential viewing for anyone working in public records and information management. The webinar will be on Thursday 8 September at 12pm. More details will follow next month, though you can sign up before then here: [LINK](#)

**New book looking at data anonymisation**

The recently published book, the Anonymisation Decision Making Framework is the first serious attempt to unify technical and legal aspects of anonymization. It provides a comprehensive guide to anonymisation in practice and has been endorsed by Elizabeth Denham, our new Information Commissioner. Commenting on the book she said: "This authoritative and accessible decision-making framework will help the information professional to anonymise personal data effectively. "The framework forms an excellent companion piece to the ICO's code of practice." [It's available here in open book form](#).

Freedom of Information

**Trafford Council joins Met Police on FOI monitoring list**

The ICO has announced that Trafford Council will be monitored over the timeliness of its responses to freedom of information requests.

The council will join the Metropolitan Police Service in having its performance reviewed, after the regulator identified a significant number of cases not being responded to within the statutory time limit of 20 working days.

Electronic marketing

### **ICO takes action against 'sugging' firm**

Passing off nuisance calls as legitimate market research "will not wash", the ICO's head of enforcement has said. Steve Eckersley's warning came as the ICO issued a stop order against a company that falsely claimed it was phoning people as part of a lifestyle survey – a practice known as "sugging".

### **Recent enforcement action**

**Prosecutions:** Clarity Leeds Ltd

**Enforcement notices:** Change and Save Ltd, Consumer Finance Claims Ltd, Nottingham Forest Football Club

**Undertakings:** Northern Health & Social Care Trust

More information on these breaches can be found on the enforcement section of our website.

Previous newsletters can be viewed on our website.

### **Further information**

For more information about the ICO, subscribe to our E-newsletter at www.ico.org.uk. The ICO is also on Twitter, Facebook and LinkedIn.

A list of our latest job vacancies can also be found at: http://www.ico.jobs/.

You can unsubscribe from the ICO E-newsletter here.



**Steven Johnston**

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**From:** GIRFEC@gov.scot  
**Sent:** 09 August 2016 14:31  
**Subject:** Named Person - Supreme Court Judgement - Letter from Deputy First Minister - 09/08/2016  
**Attachments:** Education DP 1 August 2016.docx; DFM letter to Named Person service provider- 9 august.pdf

Dear Colleagues,

Please find attached a letter from the Deputy First Minister to you, as key stakeholders and Named Person service providers, following the recent Supreme Court Judgement on Named Person.

Please also find attached Glasgow's position on the Supreme Court judgement and what steps they have taken. You may wish to use this as an example of how to communicate your position, however individual organisational legal advice should be sought.

The Government is considering its position following the Supreme Court judgement. We understand that you will be keen to have information about commencement and the development of guidance, and we will share this as soon as it is available. As the Deputy First Minister says in his letter, we are committed to discussing with key stakeholders the best way of giving effect to the Named Person service following the judgement. We will continue to communicate with you, however if you have any questions in the meantime please contact [GIRFEC@gov.scot](mailto:GIRFEC@gov.scot).

I hope this is helpful, and thank you for your continuing support.

Many Thanks,

GIRFEC Team

2-C North, Victoria Quay | Edinburgh | EH6 6QQ

\*\*\*\*\*

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Tha am post-d seo (agus faidhle neo ceanglan còmhla ris) dhan neach neo luchd-ainmichte a-mhàin. Chan eil e ceadaichte a chleachdadh ann an dòigh sam bith, a' toirt a-steach còraichean, foillseachadh neo sgaoileadh, gun chead. Ma 's e is gun d'fhuair sibh seo le gun fhiosd', bu choir cur às dhan phost-d agus lethbhreac sam bith air an t-siostam agaibh, leig fios chun neach a sgaoil am post-d gun dàil.

Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

\*\*\*\*\*

Following the Supreme Court judgement on the Named Person legislation, Glasgow City Council's current position on information sharing in relation to children and young people is set out below.

Glasgow City Council continues to prepare for the introduction of the Named Person legislation. In doing so, it will work with partners in Glasgow City, the Scottish Government and other agencies and in accordance with the recent Information Commission Office (ICO) statement on the Named Person Scheme.

The Council will follow advice and guidance that is anticipated from the Scottish Government as part of this process. The council notes the concerns of the Supreme Court but is also reassured by the ICO statement that information sharing for child protection is not affected by the judgement and consequently, we should continue to share such information within the framework of the Data Protection Act 1998 and other relevant legislation.

Glasgow city council remains committed to the aspirations of getting it right for every child and to that end the council have developed, with partners well established pathways, processes and protocols to safeguard and support children and young people. In addition, every day within Glasgow, professionals continue to share information in a thoughtful, respectful and proportionate manner. There will be no change to that ongoing professional practice. It remains business as usual and to that end the well-established pathways will continue to operate;

- Early Years Joint Support Teams EYJST (Co-ordinated through early years establishments).
- Joint Support Teams JST (Co-ordinated through our Learning Communities).
- Social Care Direct-will continue to receive all social work requests for assistance and urgent child protection
- Out of Hours-Glasgow and Partners Emergency Social Work Service
- Non-Offence Referral Management NORM (Co-ordinated by Social Care Direct addressing all domestic violence incidents).
- Early and Effective Intervention EEI (Co-ordinated by Community Safety Glasgow)

The council will continue to work with partners to protect and support children and young people by sharing information without the consent of the child or young person if the disclosure is necessary in order to protect their vital interests or if the disclosure is necessary for the exercise of a statutory function. We will also continue to comply with other data protection principles under the Data Protection Act (for example, in relation to sensitive personal data, conditions under Schedule 3 of the Data Protection Act) and will ensure that all information sharing is lawful, proportionate and necessary in order to ensure compliance with human rights and law. We will continue to work with health colleagues, Police Scotland and other agencies to ensure that any processes in place comply with the Data Protection Act and Human Rights Act. We will also continue to provide further communication and clarification as it emerges.

I am particularly grateful for the support and patience of colleagues while we worked through the Supreme Court's judgement and how this impacted on our practices going forward. I would now expect our proof of concept approach to continue with Police sending in Concern forms which in their view comply with the Data Protection Act to "Named Person Service". This process should resume as of Friday 5<sup>th</sup> August. We will continue to roll out our training which is being adjusted to take cognisance of the Supreme Court's ruling and any concerns should be flagged to Lesley Mortimer ([Lesley.mortimer@glasgow.gov.uk](mailto:Lesley.mortimer@glasgow.gov.uk)), which will feed into our learning as move towards a Named Person Service.



F/T: 0300 244 4000  
E: dfmcse@gov.scot

Named Person service provider

09 August 2016

Dear Sir/Madam,

You will be aware that the Supreme Court's judgment on the Named Person provisions in the Children and Young People (Scotland) Act 2014 ("2014 Act") was handed down on 28 July 2016. I am keen that you, as key stakeholders and Named Person service providers under the legislation, are made aware of the Scottish Government position following the judgment.

The Supreme Court judgment;

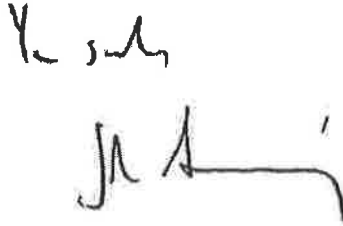
- ruled that the principle of providing a named person for every child and young person does not breach human rights and is compatible with EU law;
- rejected the petitioners' argument that the legislation relates to reserved matters;
- ruled that the information-sharing provisions of the 2014 Act are incompatible with Article 8 of the European Convention on Human Rights and that changes are needed to make those provisions compatible with Article 8.

What this means is that the Scottish Government is required to amend the information-sharing provisions in the 2014 Act to provide greater clarity about the basis on which information will be shared to ensure compliance with the ECHR. This needs to happen before we can commence those provisions and will require the agreement of the Scottish Parliament. Given the time required for Parliamentary and legal processes to achieve the required changes to the 2014 Act the Scottish Government will not commence any provisions within Part 4 (Provision of Named Persons) and Part 5 (Child's Plan) of the 2014 Act on 31 August 2016. In addition, the draft statutory guidance on these Parts of the 2014 Act will be revised.



The Scottish Government is already engaging with a range of stakeholders on these issues, and will develop this engagement further in the coming weeks. I will write to you in due course to give you further information regarding the commencement of these provisions and the development of guidance.

Thank you for your continued support.

A handwritten signature in black ink, appearing to read 'John Swinney', written in a cursive style.

**JOHN SWINNEY**

**Steven Johnston**

---

**From:** Helen Davies  
**Sent:** 01 August 2016 09:09  
**To:** David Murphy  
**Subject:** FW: Councils trialling Named Person scheme - Mail on Sunday

Little bit extra in here:

**Helen Davies**  
**Lead Communications Officer**

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
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**From:** Helen Davies  
**Sent:** 29 July 2016 15:11  
**To:** Maureen Falconer  
**Cc:** Kenneth Macdonald; David Freeland  
**Subject:** RE: Councils trialling Named Person scheme - Mail on Sunday

Thanks Maureen, that's really helpful.

Hope you all have a good weekend.

**Helen Davies**  
**Lead Communications Officer**

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
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**From:** Maureen Falconer  
**Sent:** 29 July 2016 14:44  
**To:** Helen Davies  
**Cc:** Kenneth Macdonald; David Freeland  
**Subject:** RE: Councils trialling Named Person scheme - Mail on Sunday

Good afternoon Helen

Further to your email:

It should be understood that specific Scottish Councils are piloting *non-statutory*, single point of contact schemes similar to, *but not the same as*, the Named Person Service proposed under the Children & Young People (Scotland) Act 2014 (CYPA). As such, these pilot schemes must be in compliance with legislative obligations under current law, including the DPA. While the Supreme Court judgement was specific to the statutory information sharing provisions contained within the CYPA, it provides a timely prompt for those Councils to review their current processes to ensure that they are compliant. For example,

the judgement makes clear the need for practitioners to emphasise to children, young people and parents that any advice, support or guidance offered by them is voluntary with no consequences if it is not followed. In addition, where the information does not meet the existing threshold for overriding duties of confidentiality then consent should be sought to share the information if no other legal basis can be relied upon. The ICO is not making direct contact with these Councils but we have contributed to the general advice Scottish Government is sending out to all Councils in light of the judgement. The ICO is, nevertheless, happy to work directly with stakeholders to ensure compliance.

I hope this is helpful and do come back if you need anything further.

Kind regards

Maureen



Maureen H Falconer  
Regional Manager - Scotland

Information Commissioner's Office, 45 Melville Street, Edinburgh EH3 7HL  
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For secure emails over gsi please use [Maureen.Falconer@ico.gsi.gov.uk](mailto:Maureen.Falconer@ico.gsi.gov.uk)

---

**From:** Helen Davies  
**Sent:** 29 July 2016 12:51  
**To:** Maureen Falconer; Kenneth Macdonald; David Freeland  
**Subject:** Councils trialling Named Person scheme - Mail on Sunday

Hi Ken/Maureen/David,

I know you're busy with Liz's visit today but if you have chance to look at this during the afternoon that would be much appreciated.

We've just had a call from the Mail on Sunday about the Named Person scheme.

I've sent the journalist our statement but he was also asking what advice we were giving the council's trialling the scheme.

What are your thoughts about this? Are the trials continuing?

I know Edinburgh Council have issued a statement saying they "Will carefully examine the content of the judgement together with our partner agencies and will take joint decisions regarding its implications for current practice."

Thanks

Helen

Helen Davies  
Lead Communications Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
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Steven Johnston

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**From:** [REDACTED] on behalf of Scotland External Mail Account  
**Sent:** 29 July 2016 12:32  
**To:** Kenneth Macdonald; Maureen Falconer; David Freeland  
**Subject:** FW: Priority Mentions | Information Commissioner's Office statement on Named Person scheme Supreme Court judgement

For info.

[REDACTED]

Information Commissioner's Office, 45 Melville St, Edinburgh, EH3 7HL.

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**From:** information commissioner  
**Sent:** 29 July 2016 09:49  
**To:** Press Team (internal); Scotland External Mail Account; Meagan Mirza; Tumi Atolagbe  
**Subject:** FW: Priority Mentions | Information Commissioner's Office statement on Named Person scheme Supreme Court judgement

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**From:** [info@dodsinformation.com](mailto:info@dodsinformation.com) [<mailto:info@dodsinformation.com>]  
**Sent:** 28 July 2016 16:30  
**To:** information commissioner  
**Subject:** Priority Mentions | Information Commissioner's Office statement on Named Person scheme Supreme Court judgement

You received this email because you are subscribed to the Dods Monitoring service.

[REDACTED]



**From:** David Murphy  
**Sent:** 01 August 2016 09:20  
**To:** Kenneth Macdonald  
**Cc:** Elizabeth Denham; Maureen Falconer; David Freeland; Press Team (internal)  
**Subject:** Named Person pilot scheme story  
**Attachments:** Now investigate ALL Named Person pilot schemes - watchdog, MoS, 010816.pdf

The Mail on Sunday ran a piece (attached) this weekend about our suggestion that the pilots running around the Named Persons Scheme need to make sure they're complying with the DPA.

While the headline is eye-catching, the story is fairly straightforward: we were asked whether the Supreme Court judgment would impact the pilot schemes, and we said they'd have to continue to follow the existing law.

The journalist quoted us from an explanation given to them by us, rather than the formal line. Fortunately we were prepared for this, and the wording was carefully chosen. Given it has now appeared in the MoS, I think it's fair that we'd give this to other papers, should they call:

It should be understood that specific Scottish councils are piloting *non-statutory*, single point of contact schemes similar to, *but not the same as*, the Named Person service proposed under the Children & Young People (Scotland) Act 2014 (CYPA).

As such, these pilot schemes must be in compliance with legislative obligations under current law, including the Data Protection Act. While the Supreme Court judgement was specific to the statutory information sharing provisions contained within the CYPA, it provides a timely prompt for those councils to review their current processes to ensure that they are compliant.

The ICO is not making direct contact with these councils but we have contributed to the general advice Scottish Government is sending out to all councils in light of the judgement. The ICO is, nevertheless, happy to work directly with stakeholders to ensure compliance.



David Murphy  
Media Relations Group Manager

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,  
Cheshire SK9 5AF

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**Steven Johnston**

---

**From:** Helen Davies  
**Sent:** 14 April 2016 16:31  
**To:** Helen Davies  
**Subject:** Named Person scheme

We gave evidence saying the scheme would comply with existing law under the DPA.

<http://www.gov.scot/Resource/0041/00418080.pdf>

Helen Davies  
Lead Communications Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
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Steven Johnston

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**From:** Helen Davies  
**Sent:** 29 July 2016 15:15  
**To:** [REDACTED]  
**Subject:** RE: Call to ICO

Hi [REDACTED]

I've checked with colleagues in our Scotland office and now have answers to your question about the trials being done by some councils. I wasn't planning on sending this across as a line as I think our earlier statement covers it but it should be useful for info:

It should be understood that specific Scottish councils are piloting *non-statutory*, single point of contact schemes similar to, *but not the same as*, the Named Person service proposed under the Children & Young People (Scotland) Act 2014 (CYPA).

As such, these pilot schemes must be in compliance with legislative obligations under current law, including the Data Protection Act. While the Supreme Court judgement was specific to the statutory information sharing provisions contained within the CYPA, it provides a timely prompt for those councils to review their current processes to ensure that they are compliant.

The ICO is not making direct contact with these councils but we have contributed to the general advice Scottish Government is sending out to all councils in light of the judgement. The ICO is, nevertheless, happy to work directly with stakeholders to ensure compliance.

Kind regards

Helen

Helen Davies  
Lead Communications Officer

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**From:** [REDACTED]  
**Sent:** 29 July 2016 12:44  
**To:** Helen Davies  
**Subject:** RE: Call to ICO

[REDACTED]

**From:** Helen Davies [<mailto:Helen.Davies@ico.org.uk>]  
**Sent:** 29 July 2016 12:40

To: [REDACTED]  
Subject: Call to ICO

Hi [REDACTED]

I understand you spoke to my colleague David about the Named Person scheme. There's a statement from us on our website: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2016/07/ico-statement-on-named-person-scheme/>

I'm going to check with colleagues about councils trialling the scheme and get back to you on that point.

Kind regards

Helen

Helen Davies  
Lead Communications Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
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## Steven Johnston

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**From:** Helen Davies  
**Sent:** 29 July 2016 15:28  
**To:** Kirsty Keogh  
**Subject:** Named Person scheme - in case you get calls at weekend

### Background:

The Children & Young People (Scotland) Act ("CYPA") contains a number of provisions to support children and young people who may require some form of intervention by social work and other agencies. One such provision is the creation of a "Named Person" with two functions – (1) to provide a single point of contact for parents and children alike who may need signposting to services or otherwise seek some advice and guidance and (2) to act as a conduit through which professionals can share information on concerns about the well-being of a child or young person and thereby assist with the development of early intervention strategies, if needed.

The Christian Institute and a number of parents sought a Judicial Review over the information sharing provisions. Their petition was heard by the Outer House of the Court of Session - Scotland's civil court - in 2014 and subsequently dismissed by Lord Pentland. They then appealed to the Inner House where a bench of three also dismissed the petition unanimously. Following that, a further Appeal was heard in the Supreme Court in March of this year and the judgment was delivered 28 July 2016. Two of the three challenges were dismissed but the third – which concerned compliance with Art 8 of the European Convention on Human Rights (ie, the right to respect private and family life) – was upheld. This relates specifically to the information sharing provisions of the Act and, hence, is of interest to us.

We have been working with the Scottish Govt since the drafting stages of the legislation and won a number of changes to the proposals throughout the process. Throughout the time, we have been stressing the need for proportionality in sharing and that all such sharing under the CYPA must also comply with the DPA (particularly with regard to relevancy). This is reflected in the statutory guidance which was being prepared by the Govt. However, the Supreme Court believes that the CYPA as currently drafted breaches Art 8 in two ways. The first is that there is a risk that parents could be given the impression that they must accept the advice given to them by the Named Person. The other is that the threshold for overriding duties of confidentiality has been set too low.

Our statement – on website.

Mail on Sunday asked today about what our advice was to council's taking part in the pilot Named Person schemes.

The answer is:

It should be understood that specific Scottish councils are piloting *non-statutory*, single point of contact schemes similar to, *but not the same as*, the Named Person service proposed under the Children & Young People (Scotland) Act 2014 (CYPA).

As such, these pilot schemes must be in compliance with legislative obligations under current law, including the Data Protection Act. While the Supreme Court judgement was specific to the statutory information sharing provisions contained within the CYPA, it provides a timely prompt for those councils to review their current processes to ensure that they are compliant.

The ICO is not making direct contact with these councils but we have contributed to the general advice Scottish Government is sending out to all councils in light of the judgement. The ICO is, nevertheless, happy to work directly with stakeholders to ensure compliance.

Thanks

Helen

Helen Davies  
Lead Communications Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
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**Steven Johnston**

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**From:** Tumi Atolagbe  
**Sent:** 16 August 2016 08:35  
**To:** Meagan Mirza; Anne Russell; Ian Deasha; Steven Wright; Steven Dickinson  
**Subject:** Named Persons Scheme  
**Attachments:** Named Persons Scheme - Multi agency data sharing.docx

Interesting piece on the implementation of the Named Persons Scheme in Scotland, and possible breaches to the HRA 1998.



Tumi Atolagbe  
Policy Officer, Police Justice and Borders

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. 01625 545201

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## EXCLUSIVE

By Allison Preuss

A TEENAGER with a rare, chronic condition was reported to Child Protection by his Named Person because his illness kept him off school.

Ciaran Gilchrist struggles to eat and can be sick dozens of times a day because of a severe food allergy which causes his throat to become inflamed. It is known as eosinophilic esophagitis and affects only one in three million people.

However, when he continued to miss classes at Speyside High School in Aberlour, Moray, his Named Person – a guidance teacher – referred the family to the Children's Reporter.

The 14-year-old's outraged mother, Clare, said the state guardian had needlessly interfered in their lives, making the family feel like criminals.

She spoke against the scheme, which has been piloted in parts of Scotland, as it came to light Moray Council will implement the practice from Tuesday despite a Supreme Court ruling last month that elements of the legislation were unlawful and in breach of human rights.

Ms Gilchrist, from Rothes, said her son's poor school attendance was seized upon by

his Named Person.

She explained the teacher "dragged in Child Protection and referred us to the Children's Reporter", and added: "Ciaran ended up hospitalised

because of his Named Person. Last summer was destroyed completely for us, and more importantly for our son and daughter, who worried themselves silly after receiving letters from the Reporter, although they had done nothing wrong.

"It was vindictive and cruel, especially as Rebecca was still at primary school with no issues whatsoever.

"How can a Named Person have that much power? They have destroyed my son's life and he trusts nobody now."

She voiced her concerns after learning Moray officials were preparing to go ahead with the Scottish Government scheme despite warnings from the country's most senior judges.

Ministers had planned to have Named Persons for every

child under 18 from the end of the month under the Children and Young People (Scotland) Act 2014 but delayed the move because of the judgment.

However, Moray Council has confirmed it is going ahead with its own version from this week.

Despite assurances the local authority would not breach any laws, parents have been left powerless to stop the implementation and fear sensitive data will be shared between agencies without their consent.

Last year a senior council employee confirmed there was a new system for data collection and sharing designed to support the scheme. Anne Pendery, service manager for the integration of children's services, said personal data of every child and associated adult was to be held on a single electronic record with information from every organisation involved.

It later emerged that, during

the early trials of the scheme, a guidance teacher appointed among the council's first Named Persons had been convicted of sharing sexual fantasies about children and placed on the sex offenders register.

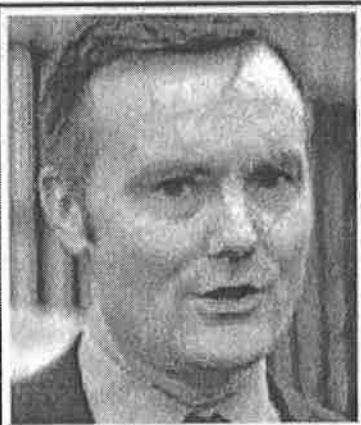
There were further issues with the pilot earlier this year when Highlands and Islands Tory MSP Douglas Ross questioned its viability after finding that the work of 80 Named Persons was covered by just eight officials over Easter holidays with one of them handling 25 police referrals in a single day.

Simon Calvert, of the NO2NP campaign, also criticised the

council's decision. He said the Supreme Court ruling "gutted" the legislation's central component adding: "It said the sharing of private data at the undefined threshold of wellbeing was a breach of human rights. What is it Moray think they are now going to implement? Because, if it is the Named Person scheme contained in the 2014 Act, they will be breaking the law, it's as simple as that."

But a Moray Council spokesman said: "We will not be adopting the information-sharing protocols in the 2014 Act, but will still conform to the Information Commissioner's ruling."

"The council has always complied with statute and no information-sharing has taken place in Moray outwith current law."



**'If the Named Person scheme is implemented, they will be breaking the law'**

Simon Calvert, of NO2NP

**RSS Feed:** UK Human Rights Blog  
**Posted on:** 29 July 2016 10:59  
**Author:** David Scott  
**Subject:** Scottish Government's Named Persons scheme incompatible with Article 8

**Full article link:** <https://ukhumanrightsblog.com/2016/07/29/scottish-governments-named-persons-scheme-incompatible-with-article-8/>

***The Christian Institute and others (Appellants) v The Lord Advocate (Respondent) (Scotland) [2016] UKSC 51*** – read judgment [here](#)

The Supreme Court has today unanimously struck down the Scottish Parliaments's Named Persons scheme as insufficiently precise for the purposes of Article 8, overturning two previous decisions at the Court of Session (see our previous coverage [here](#)).

### Background

The Children and Young People (Scotland) Act 2014 introduced a host of measures intended to support and protect children in Scotland, making it “the best place in the world for children to grow up”. One such measure was the introduction of a “Named Person Service” (NPS), under Part 4 of the Act. This requires public service providers to designate a named person to every child in Scotland, entrusted with promoting their well-being through support and advice in gaining access to services. In practice, this would be someone already working with the child, such as a health professional or a senior teacher.

The 2014 Act also contains provisions relating to the sharing of information between named persons and public authorities. A public authority must generally provide information to the named person's employer where such information is relevant to the exercise of the named person's functions (s 26 (1), (2)). Furthermore, a public authority may provide information where they consider it “necessary or expedient” for the exercise of named person functions (s 26 (8), (9)). When considering if information should be provided the information holder should have regard to the views of the child (s 25). These measures fit within the broader intentions of the Children and Young People (Scotland) Act 2014, which seeks to move away from public authority intervention *after* the identification of risk towards a new system of collaboration between statutory bodies, unlinked from the performance of their individual functions and with an emphasis on early intervention and the promotion of child well-being more generally.

Since its introduction the scheme has faced criticism, not least from the campaign group [No To Named Persons](#), who were one of the applicants in this case. Critics have argued that it undermines the privacy of families, grants undue state power and influence over children, and focuses limited social service resources on “trivial or irrelevant family issues” and children not most in need of state protection. To date the No To Named Persons' petition against the NPS has been signed by over 35,000 people.

However, the NPS has received [backing](#) from children's charities such as Barnardo's, Aberlour, Action for Children and Children 1<sup>st</sup>, and is supported by the Green Party as well as the SNP at Holyrood.

The NPS was due to come into force across Scotland on August 31<sup>st</sup>, although trials were already underway in the Highlands, Edinburgh, Fife, Angus and South Ayrshire.

## A refresher on the Scotland Act 1998

The challenge before the Supreme Court today sought to argue that Part 4 of the Children and Young People (Scotland) Act 2014 was outside the legislative competence of the Scottish Parliament.

The power for the Scottish Parliament to pass laws is granted by s28 of the Scotland Act 1998. Its powers are constrained, however, by s29, which in relevant part reads (with emphasis added):

### 29 Legislative competence

(1) An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.

(2) A provision is outside that competence so far as any of the following paragraphs apply—

(a) it would form part of the law of a country or territory other than Scotland, or confer or remove functions exercisable otherwise than in or as regards Scotland,

(b) it relates to reserved matters,

(c) it is in breach of the restrictions in Schedule 4,

(d) it is incompatible with any of the Convention rights or with EU law,

(e) it would remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland.

The reserved matters for s29(2)(b) are given in Schedule 5 of the Act, which lists a whole host of areas that Westminster retains legislative power over—things like the Constitution, foreign affairs, certain financial matters, etc.

Schedule 6 allows Acts of the Scottish Parliament to be challenged if they are outside the legislative competence given in s29, and any Act found to be outside the Parliament's competence can be suspended under s102. However, courts are under a duty under s101 to read an Act of the Scottish Parliament as far as possible as to be within competence. This means that, for the Supreme Court to have issued an order under s102, it must have had no other possible way of reading the Act as within Scottish Parliament competence. The first time this happened was only as recently as 2013, in *Salvesen v Riddell* [2013] UKSC 22.

## Arguments

The appellants sought to argue their case on three grounds: that Part 4 related to a reserved matter (s29(2)(b) of the Scotland Act 1998); that it was incompatible with European Union law (s29(2)(d) of the Scotland Act 1998); and that it was incompatible with Articles 8 of the ECHR (also s29(2)(d) of the Scotland Act 1998).

## The Court of Session's Judgments

The appellants had been unsuccessful in both the Outer and Inner House of the Court of Session. It is interesting to contrast the findings of those courts with those of the Supreme Court.

The Outer House found the petitioners' case to be "speculative and hypothetical" [50-52], finding "no

basis for holding that the statutory functions of a named person are incapable of being exercised in a manner that respects Convention rights" [51]. Additional arguments under Article 9 and A2P1 were rejected as "unsound" and "manifestly [lacking] merit" [59], and there were sufficient safeguards to render the legislation proportionate to the legitimate aim pursued [54]. Similar grounds were used to reject the EU argument [61-81] and the "exceptional" common law fundamental rights argument [90]: there was nothing in the legislation to suggest that the NPS would operate contrary to these rights, and deference should be shown to the will of the elected Scottish Parliament. Finally, the Lord Ordinary rejected the argument that Part 4 clashed with the Council Directive 95/46/EC (protection of individuals with regard to the processing of personal data and on the free movement of such data) or its domestic implementation by the Data Protection Act, both reserved matters for Westminster under Part II of Schedule 5 of the Scotland Act [85].

The Inner House largely concurred with the Outer House's decision. It found that the Lord Ordinary had been correct in limiting his assessment to whether Part 4 would inevitably breach the Convention:

The existence of the possibility of interference, if a person acts in a particular way once the scheme is operating, does not mean that there has, or will inevitably be, a breach of the Convention and thus that the legislation is incompatible with a Convention right. [66]

The mere creation of a named person, available to assist a child or parent, no more confuses or diminishes the legal role, duties and responsibilities of parents in relation to their children than the provision of social services or education generally. It has no effect whatsoever on the legal, moral or social relationships within the family. The assertion to the contrary, without any supporting basis, has the appearance of hyperbole. [68]

The claims under Article 9 and A2P1 were similarly struck out as ill-founded [69-70].

Having already rejected the Article 8, the Inner House nevertheless chose to address the issue of proportionality, finding that any potential interference with Convention rights would be justified. First, it found that the legislation had a legitimate aim, namely, the promotion of child welfare. The petitioners tried to draw a distinction between promoting the well-being of children and protecting them from harm, arguing that state intrusion was only justified in the latter scenario. However, it was held to be understandable that policy makers would want a scheme which identified threats in advance rather than waiting for a child to be the subject of a specific threat. Secondly, the chosen scheme was rationally connected to its objective. Without it there was the potential for a lack of communication which would "seriously undermine" the government's aims. Finally, whilst the role of parents was to be respected, there was nothing to prevent the state from putting in place reasonable measures to support children and their parents. The scheme was designed to ensure that crucial information about a child's welfare was not missed, with the need to ensure early detection of welfare issues outweighing any adverse effect on children and parents.

In relation to the data sharing provisions, the Inner House found that the 2014 Act could be operated consistently with the data protection regime, including the Data Protection Act 1998 which transposed the EU Charter and Directives concerning personal data into domestic law. Whilst it was possible that breaches of data protection principles could occur in particular cases, there was nothing to suggest that the legislation necessarily infringed those principles.

## **The Supreme Court's Judgment**

*The reserved matters argument (paragraphs 27-66)*

In agreement with the Court of Session, the Supreme Court rejected that Part 4 related to a reserved matter under Schedule 5 of the Scotland Act 1998. Part 4 did not modify the Data Protection Act 1998, as s35(1) of the Data Protection Act 1998, read with s70(1), envisages the disclosure of data via an Act of the Scottish Parliament:

In view of that provision, the Scotland Act cannot sensibly be interpreted as meaning that an enactment “relates to” the subject-matter of the DPA, and is therefore outside the powers of the Scottish Parliament, merely because it requires or authorises the disclosure of personal data. [63]

The power to legislate on data disclosure was not therefore outwith the powers of the Scottish Parliament.

The question remained, however, whether the content of Part 4 in particular contravened the Data Protection Act 1998. The Supreme Court accepted the arguments of the Scottish Ministers that the purpose of Part 4 is “to promote the wellbeing of children and young people”, that the provisions concerning the processing of personal data are “merely consequential upon, or incidental to, that purpose” [64] and that Part 4 “does not detract from the regime established by the DPA and the Directive” [65]. The legislation could thus not be struck down under s29(2)(b) of the Scotland Act 1998.

#### *The EU law argument (paragraphs 102-105)*

The Supreme Court also found itself “in large measure in agreement with the Inner House and the Lord Ordinary” on the question of EU law, finding that the Data Protection Act 1998 sufficiently limited Part 4 in order to keep it in accordance with Council Directive 95/46/EC [103]. While questions of privacy under the Charter of Fundamental Rights was raised, this was not considered separate from the grounds raised under the Convention argument [104], and the Court was further satisfied that retention of data under Part 4 was entirely coherent with the Data Protection Act 1998. Accordingly, there had been no violation of EU law [105].

#### **The Convention argument (paragraphs 67-101)**

However, the Supreme Court took a very different view from the Scottish courts in relation to the appellants’ argument under the Article 8 of the Convention, the Article 9 and A2P1 arguments having been discarded by the appellants. The appellants’ Article 8 challenge consisted of “narrow” and “broad” arguments:

The broad challenge is that the compulsory appointment of a named person to a child involves a breach of the parents’ article 8 rights unless the parents have consented to the appointment or the appointment is necessary to protect the child from significant harm. The narrower challenge focusses on the provisions in sections 26 and 27 for the sharing of information about a child. [68]

While the Court found that a named person providing advice, information and support and helping the parent, child or young person to access a service or support (under s19(5)(a)(i) and (ii)) would not normally engage Article 8, the effect of the information-sharing provisions of Part 4 (in particular, sections 23, 26 and 27) would result in interferences with rights protected by article 8 of the ECHR [78]. The Supreme

Court therefore had to ask whether such interferences could be justified under Article 8(2).

What is most interesting is *how* the Court finds the Act incompatible with Article 8: while agreeing that the Act was not a disproportionate interference in and of itself, it found the law insufficiently precise to be “in accordance with law”.

#### *Accordance with law (the “narrower” challenge)*

In order to be “in accordance with the law”, according to the Court, the measure must not only have some basis in domestic law but also be accessible to the person concerned and foreseeable as to its effects [79]. The Court outlines two qualitative elements of this accessibility and foreseeability:

First, a rule must be formulated with sufficient precision to enable any individual—if need be with appropriate advice—to regulate his or her conduct...Secondly, it must be sufficiently precise to give legal protection against arbitrariness. [79]

The question is therefore whether Part 4 was sufficiently precise to meet these criteria. The Court found “very serious difficulties” in understanding the relationship of Part 4 within the context of the Data Protection Act 1998 [83], and noted particular concerns in the safeguards ensuring that data is only shared in accordance with Article 8 [84]. Accordingly, the Court found that the current drafting of the data-sharing provisions of Part 4 were insufficiently precise to meet the “accordance with law” standard, and the defect could not be “read down” in accordance with s101 of the Scotland Act 1998. An order was thus made under s102 that the information-sharing provisions of Part 4 were outside the legislative competence of the Scottish Parliament [107].

#### *Proportionality (the “broad” challenge)*

The Court also studied the broader proportionality of Part 4. Such a challenge to the validity of legislation is, as they note, a “high hurdle”, and the Supreme Court agreed with the Court of Session that this had not been surmounted. Part 4 as a whole could not, therefore, be struck down as a disproportionate interference with Article 8 [88]. The Court did, however, have significant concerns over the potential of specific provisions to lead to disproportionate interference in specific cases, and made some suggestions for reform.

### **Correcting the Problems**

While unable to give exact legislative proposals, the Court provided the Scottish Government some guidance. First, they found that guidelines implementing the judgment would be insufficient considering s28 of Part 4 only asks public authorities to “have regard” to any guidance issued. Thus subordinate legislation or binding “guidance” would be required to address the circumstances in which (i) the child, young person or parent should be informed of the sharing of information or (ii) consent should be obtained for the sharing of information, including confidential information. Greater clarity is also needed to address the relationship between Part 4 and the non-disclosure protections in the Data Protection Act: “In short, changes are needed both to improve the accessibility of the legal rules and to provide safeguards so that the proportionality of an interference can be challenged and assessed.” [108]

However, the Supreme Court also took time to note other areas that could be reconsidered alongside this clarification “to minimise the risk of disproportionate interferences with the article 8 rights of children, young persons and parents” [108]. Care should be taken to emphasise the voluntary nature of the advice, information, support and help which are offered under section 19(5)(a)(i) and (ii), as there is a real risk that parents will be pressured into accepting advice or services from the state, as refusal of such services may



be taken as evidence of a risk of harm, creating stronger grounds for state intervention [94-95]. Moreover, the obligation to share information under s26(1) and (3) could be triggered by “very broad criteria” for assessing wellbeing, with a high possibility of breaching Article 8, particularly in relation to the “duty of confidentiality”. The provisions do not require the consent of the child or young person to share the information; nor do they require that there be any good reason for dispensing with this consent [98], even with the limits the Data Protection Act 1998 would provide [99-100].

The Court summarises:

100. ...The central problems are the lack of any requirement to obtain the consent of the child, young person, or his or her parents to the disclosure, the lack of any requirement to inform them about the possibility of such disclosure at the time when the information is obtained from them, and the lack of any requirement to inform them about such disclosure after it has taken place. Such requirements cannot, of course, be absolute: reasonable exceptions can be made where, for example, the child is unable to give consent, or the circumstances are such that it would be inappropriate for the parents’ consent to be sought, or the child’s best interests might be harmed. But, without such safeguards, the overriding of confidentiality is likely often to be disproportionate.
101. In order to reduce the risk of disproportionate interferences, there is a need for guidance to the information holder on the assessment of proportionality when considering whether information should be provided. In particular, there is a need for guidance on (a) the circumstances in which consent should be obtained, (b) those in which such consent can be dispensed with and (c) whether, if consent is not to be obtained, the affected parties should be informed of the disclosure either before or after it has occurred. Also relevant is whether the recipient of the information is subject to sufficient safeguards to prevent abuse: *MS v Sweden* (1997) 28 EHRR 313. Further, if the guidance is to operate as “law” for the purposes of article 8, the information holder should be required to do more than merely have regard to it.

Crucially, the balance of these matters will involve policy questions which are the responsibility of the Scottish Ministers and the democratic legislature [108].

## Commentary

Three points are worthy of discussion. The more immediate is the political ramifications for the NPS, particularly considering the scheme is already underway in many parts of Scotland. [Politicians at Holyrood](#) have already staked out their positions, with Scottish Conservative leader Ruth Davidson calling the ruling “important” and “a victory for campaigners” against “illiberal, invasive and deeply flawed” legislation. Other parties have called for a new approach to the implementation of the NPS and its description to the public.

The Supreme Court granted an order under s102(2)(b) of the Scotland Act 1998 “to allow the Scottish Parliament and the Scottish Ministers an opportunity, if so advised, to correct the defects which we have identified”, and have given 42 days for the parties to provide written submissions on the matter, including the possibility of further later submissions from the Lord Advocate [109-110]. Cabinet Secretary for Education and Skills John Swinney has stated that the government would start work to amend the legislation “immediately” so that the scheme can still be rolled out “at the earliest possible date”, but is

facing calls from the Scottish Lib Dems to reconvene Parliament from its summer recess to properly debate the future of the NPS. Whichever way this debate lands, it's unlikely we've heard the last of this judgment.

Yet it's important to be clear that the Supreme Court did not actually strike down the NPS *as a concept*. As it said at paragraph 96:

*In our view...it cannot be said that the operation of the information-sharing duties and powers in relation to any of the named person's functions will necessarily amount to a disproportionate interference with article 8 rights. But for the problem in relation to the requirement that the Act be "in accordance with the law" (paras 79-85 above), we consider that the Act would be capable of being operated in a manner which is compatible with the Convention rights. [emphasis added]*

Thus, provided the legislation is suitably clarified to meet the "accordance with law" test, there is no reason why the NPS cannot begin operating. Today's judgment may provide ammunition for critics of the NPS, but it has failed to make the scheme inherently illegal.

The final notable point is the diversion between the two Court of Session judgments—quite strident in their assertion that the NPS was entirely compatible with Article 8—and the unanimous verdict at the Supreme Court (including both Scottish Justices, Lord Reed and Lord Hodge). Unfortunately, the Supreme Court doesn't do much to show where it disagreed with the prior reasoning of the Court of Session, though it does not at paragraph 69 that Article 8 received less focus in the arguments before the lower courts. In relation to the substantive question of precision for the purposes of the interference being "in accordance with law", the Outer House gave very little consideration to the question, stating in paragraph 55 that:

*In my opinion, the provisions in Part 4 provide a sufficiently transparent and predictable code of rules for the purposes of enabling individuals to understand the legal framework governing the new service. As to the details of how the named person scheme is intended to operate at a practical level, one will have to wait for the statutory guidance and other materials already referred to. Only once all that information becomes available will it be possible to make a comprehensive assessment of whether the entire legislative scheme is in accordance with law.*

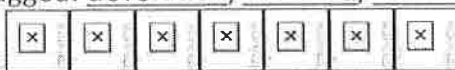
The Inner House gave even less time to the question, devoting only three sentences in paragraph 72 of its judgment:

*The named person provisions are set out in detailed legislation. There is no lack of clarity in the statutory provisions. In so far as they might constitute an interference, they are in accordance with the law.*

What is interesting is that the Supreme Court only "found" problems with the "accordance with law" test when it studied the difficulties in squaring Part 4 with the requirements of the Data Protection Act 1998 (requirements that the Supreme Court later highlights as ensuring challenges on the grounds of proportionality are available under Part 4). One can argue over the preferred judicial reasoning, but a schism such as this is a fairly rare occurrence.

In any event, the story is nowhere near from over, in either Holyrood or the courts. Watch this space to see how the amendments go...

Children, In the news, Scotland Tagged: devolution, Scotland, Scotland Act, Scotland Act 1998, Scottish Government, Scottish Parliament



[View article...](#)

## Steven Johnston

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**From:** Maureen Falconer  
**Sent:** 11 August 2016 16:37  
**To:** Anya Burgess  
**Subject:** RE: Named Persons video

Hi Anya

Sadly, I'm aware of this and I know it's being driven by an individual who seems to have a penchant for taking what's being said in a particular context to applying it in a different context to support their point of view. I think both Ken and I are taking quite a few hits on twitter but, thankfully, I don't have a social media presence so I'm blissfully unaware. We had a very productive meeting with Scottish Government this morning to try to tease out the DP issues that need to be addressed and expect to continue providing advice and guidance on finding solutions to the perceived difficulties the judgement identified.

You have a good weekend when it comes.

Section 40

Kind regards

Mo



Maureen H Falconer  
Regional Manager - Scotland

Information Commissioner's Office, 45 Melville Street, Edinburgh EH3 7HL  
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**From:** Anya Burgess  
**Sent:** 11 August 2016 16:04  
**To:** Maureen Falconer  
**Subject:** Named Persons video

Hi Maureen,

I'm sure you're already aware of this but I came across a video yesterday encouraging people to sign a petition to say no to the Named Person scheme.

In it they use a very short clip of you giving a speech and say 'what do the ICO think?' it doesn't identify where you are. The video has been on YouTube since December, but I just wanted to let you know it has been on Twitter in the past few days.

The link is here <https://www.youtube.com/watch?v=7FiS-KKmCI0>

Many thanks



Anya Burgess  
Lead Communications Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,  
Cheshire SK9 5AF

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**Steven Johnston**

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**From:** Helen Davies  
**Sent:** 28 July 2016 16:06  
**To:** [REDACTED]  
**Subject:** Named Person judgement - Information Commissioner's Office statement

Hi [REDACTED]

I understand you're covering the Supreme Court judgement on the Named Person scheme today.

Here's a statement from the Information Commissioner's Office:

Ken Macdonald, Assistant Information Commissioner for Scotland, said: "We will be working with the Scottish Government and agencies within the children's sector to ensure that the concerns of the Supreme Court are adequately addressed. In the meantime, practitioners should be reassured that information sharing for child protection purposes is not affected by the judgment and that they should continue to share such information following best practice within the framework of the Data Protection Act and other law."

Kind regards

Helen

Helen Davies  
Lead Communications Officer

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**Steven Johnston**

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**From:** Press Office (external)  
**Sent:** 28 July 2016 16:16  
**To:** Press Office (external)  
**Subject:** Information Commissioner's Office statement on Named Person scheme Supreme Court judgement

Following the Supreme Court judgement today about the 'Named Person' scheme, the Information Commissioner's Office has issued the following statement:

Ken Macdonald, Assistant Information Commissioner for Scotland, said: "We will be working with the Scottish Government and agencies within the children's sector to ensure that the concerns raised by the Supreme Court are adequately addressed. In the meantime, practitioners should be reassured that information sharing for child protection purposes is not affected by the judgment and that they should continue to share such information following best practice within the framework of the Data Protection Act and other law."

#### Notes to Editors

1. The Information Commissioner's Office upholds information rights in the public interest and promotes openness by public bodies and data privacy for individuals.
2. The ICO has specific responsibilities set out in the Data Protection Act 1998, the Freedom of Information Act 2000, Environmental Information Regulations 2004 and Privacy and Electronic Communications Regulations 2003.
3. The ICO can take action to change the behaviour of organisations and individuals who collect, use and keep personal information. This includes criminal prosecution, non-compliance enforcement and audit. The ICO has the power to impose a monetary penalty on a controller of up to £500,000.
4. To report a concern to the ICO telephone our helpline 0303 123 1113 or go to [ico.org.uk/concerns/](http://ico.org.uk/concerns/)

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**Steven Johnston**

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**From:** Kirsty Keogh  
**Sent:** 01 August 2016 09:12  
**To:** Press Team (internal)  
**Subject:** precise info

In case we want to chase Precise about late Daily Mail (Scotland) coverage:

Why is Daily Mail (Scotland) coming through a day late? Scottish editions for the Express and Star came through on the day (see below)  
A story in Mail on Sunday (Scotland) about Named Person scheme (pg 2) also came through a day late – on Monday

Kirsty

**Kantar articles list for Sunday 31 July**

Humiliation of Holyrood  
Daily Mail (Scotland) (Main), 30/07/2016, p.18, John Saturday  
Article

We'll sue the state snoopers  
Daily Mail (Scotland) (Main), 30/07/2016, p.1, Victoria Allen  
Article

'My daughter treated without my consent'  
The Sunday Express (Scotland) (Main), 31/07/2016, p.13, Alison Preuss  
Article

5000 SYRIANS CAUGHT SNEAKING INTO UK  
Daily Star Sunday (Main), 31/07/2016, p.7, Patrick Williams  
Article

Kirsty Keogh  
Team Manager (Communications)

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**Steven Johnston**

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**From:** Helen Davies  
**Sent:** 01 August 2016 09:09  
**To:** David Murphy  
**Subject:** FW: Call to ICO

Helen Davies  
Lead Communications Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
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**From:** Helen Davies  
**Sent:** 29 July 2016 15:15  
**To:** [REDACTED]  
**Subject:** RE: Call to ICO

Hi [REDACTED]

I've checked with colleagues in our Scotland office and now have answers to your question about the trials being done by some councils. I wasn't planning on sending this across as a line as I think our earlier statement covers it but it should be useful for info:

It should be understood that specific Scottish councils are piloting *non-statutory*, single point of contact schemes similar to, *but not the same as*, the Named Person service proposed under the Children & Young People (Scotland) Act 2014 (CYPA).

As such, these pilot schemes must be in compliance with legislative obligations under current law, including the Data Protection Act. While the Supreme Court judgement was specific to the statutory information sharing provisions contained within the CYPA, it provides a timely prompt for those councils to review their current processes to ensure that they are compliant.

The ICO is not making direct contact with these councils but we have contributed to the general advice Scottish Government is sending out to all councils in light of the judgement. The ICO is, nevertheless, happy to work directly with stakeholders to ensure compliance.

Kind regards

Helen

Helen Davies  
Lead Communications Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

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**From:** [REDACTED]  
**Sent:** 29 July 2016 12:44  
**To:** Helen Davies  
**Subject:** RE: Call to ICO

[REDACTED]

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**From:** Helen Davies [<mailto:Helen.Davies@ico.org.uk>]  
**Sent:** 29 July 2016 12:40  
**To:** [REDACTED]  
**Subject:** Call to ICO

Hi [REDACTED]

I understand you spoke to my colleague David about the Named Person scheme. There's a statement from us on our website: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2016/07/ico-statement-on-named-person-scheme/>

I'm going to check with colleagues about councils trialling the scheme and get back to you on that point.

Kind regards

Helen

Helen Davies  
Lead Communications Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
T. 01625 545345 F. 01625 524510 [ico.org.uk](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)  
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**Steven Johnston**

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**From:** [REDACTED] on behalf of Website Updates  
**Sent:** 29 July 2016 12:16  
**To:** Helen Davies; Website Updates  
**Subject:** RE: ICO statement on Named Person scheme

This is ready to publish, Helen.



[REDACTED]  
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**From:** Helen Davies  
**Sent:** 29 July 2016 12:06  
**To:** Website Updates  
**Subject:** FW: ICO statement on Named Person scheme

Please can you put this on the website this afternoon?  
[ICO statement on Named Person scheme](#)

Following the [Supreme Court judgement](#) about the 'Named Person' scheme, the Information Commissioner's Office has issued the following statement:

Ken Macdonald, Head of ICO Regions, said: "We will be working with the Scottish Government and agencies within the children's sector to ensure that the concerns of the Supreme Court are adequately addressed. In the meantime, practitioners should be reassured that information sharing for child protection purposes is not affected by the judgment and that they should continue to share such information following best practice within the framework of the Data Protection Act and other law."

Thanks

Helen

Helen Davies  
Lead Communications Officer

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**From:** Helen Davies  
**Sent:** 28 July 2016 16:38  
**To:** Press Office Copy All  
**Subject:** ICO statement on Named Person scheme

Hi all,

Following the Supreme Court judgement today about the 'Named Person' scheme, the Information Commissioner's Office has issued the following statement:

Ken Macdonald, Head of ICO Regions, said: "We will be working with the Scottish Government and agencies within the children's sector to ensure that the concerns of the Supreme Court are adequately addressed. In the meantime, practitioners should be reassured that information sharing for child protection purposes is not affected by the judgment and that they should continue to share such information following best practice within the framework of the Data Protection Act and other law."

Thanks

Helen

Helen Davies  
Lead Communications Officer

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**Steven Johnston**

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**From:** Helen Davies  
**Sent:** 28 July 2016 10:01  
**To:** Press Team (internal)  
**Subject:** Supreme Court rules Named Person scheme 'unlawful'

<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-36903513>

Helen Davies  
Lead Communications Officer

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
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## Steven Johnston

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**From:** Simon Entwisle  
**Sent:** 28 July 2016 15:39  
**To:** Anya Burgess  
**Cc:** Kenneth Macdonald  
**Subject:** Re: Breaking news

Thanks Anya.

Ken has done an excellent summary. If you haven't seen it already, I am sure that you, and others, would find it useful.

Sent from my iPad

On 28 Jul 2016, at 14:10, Anya Burgess <[Anya.Burgess@ico.org.uk](mailto:Anya.Burgess@ico.org.uk)> wrote:

Dear Liz, Steve and Simon,

One story to be aware of this lunchtime:

Judges at the UK's highest court have ruled against the Scottish government's Named Person Scheme. The system would appoint a named person to ensure the well-being of every child. We're disappointed with the judgment because we had offered advice and they had addressed our concerns. The ruling said the system needed more work before it could be given the go-ahead.

Ken has been speaking to the Scottish government this morning and we are working on a line.

<http://www.bbc.co.uk/news/uk-scotland-scotland-politics-36903513>

<image002.jpg>

**Anya Burgess**  
**Lead Communications Officer**

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**From:** [REDACTED]

**Sent:** 10 August 2016 11:50

**To:** ken macdonald; Kenneth Macdonald

**Subject:** Fw: Named Person - Supreme Court Judgement - Letter from Deputy First Minister - 09/08/2016

In case you haven't got this....

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**From:** [GIRFEC@gov.scot](mailto:GIRFEC@gov.scot) [mailto:[GIRFEC@gov.scot](mailto:GIRFEC@gov.scot)]

**Sent:** 09 August 2016 14:31

**Subject:** Named Person - Supreme Court Judgement - Letter from Deputy First Minister - 09/08/2016

Dear Colleagues,

Please find attached a letter from the Deputy First Minister to you, as key stakeholders and Named Person service providers, following the recent Supreme Court Judgement on Named Person.

Please also find attached Glasgow's position on the Supreme Court judgement and what steps they have taken. You may wish to use this as an example of how to communicate your position, however individual organisational legal advice should be sought.

The Government is considering its position following the Supreme Court judgement. We understand that you will be keen to have information about commencement and the development of guidance, and we will share this as soon as it is available. As the Deputy First Minister says in