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**CORU, Fitness to Practise and Service Users' Personal Data**

2015 has seen the first fitness to practise complaints to CORU against social workers. One of the issues which has arisen relates to the disclosure, by social workers who are the subject of a complaint, of service users' personal data and providing files or relevant extracts of files to CORU. **Gary Rice** and **Aidan Healy** of **DAC Beachcroft** explain the issues which have arisen and how they have approached them in the context of the cases in which they have represented social workers.

DAC Beachcroft were appointed to advise and represent members of the IASW in fitness to practise complaints made against social workers to CORU. One of the issues which arose is that Tusla, the employer of the social workers in question, advised its employees that social workers can’t share information on cases with CORU without the consent of service users, which of course may include the person making the complaint to CORU.

The view of DAC Beachcroft was that this was not correct and that such an approach could fundamentally undermine the fairness of fitness to practise proceedings under CORU. DAC Beachcroft were of the view that there were a number of reasons why the Data Protection Acts 1988-2003 ("DPA") may not be as restrictive as was being suggested. For instance, the complaint form specifically says that by signing this form "*I agree that the person I am making the complaint against can disclose* *information to CORU that CORU needs to consider my complaint*".

The case files belong to Tusla and not to the individual social workers. Any submission a social worker wishes to make to the preliminary proceedings committee or at a later stage in the fitness to practise process could be drastically different if the social worker could not share with CORU relevant information on the cases at issue and the social worker could be substantially prejudiced by not being in a position to respond fully and properly to the complaint.

DAC Beachcroft advised that the DPA and general confidentiality obligations may not be as restrictive as they might first appear:

1. A social worker may not be disclosing any personal data to CORU which hasn’t already been disclosed to CORU by the complainant. In other words, the complainant may have already disclosed personal data upon which the social worker would simply be commenting.
2. This may not be sufficient to capture the variety of individuals whose personal data may be contained in a case file. However, there are various other justifications under the DPA for the disclosure of personal data. These justifications which may be applicable depend on whether the data is personal data or sensitive personal data. For example, sensitive personal data may be disclosed if the disclosure:
3. is necessary for the administration of justice (which would seem to be applicable in relation to fitness to practise matters);
4. is necessary for the performance of a function conferred on a person by or under an enactment (i.e. it is necessary so CORU can do its job under the legislation); or
5. is required for the purpose of obtaining legal advice or for the purposes of, or in connection with, legal proceedings or prospective legal proceedings, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.
6. Section 8 of the DPA provides that "*Any restrictions in this Act on the processing**of personal data do not apply if the processing**is required for the purposes of obtaining legal advice or for the purposes of, or in the course of, legal proceedings in which the person making the processing**is a party or a witness*."
7. An individual has a constitutional right to a good name and a right to vindicate that good name. A person also have a right to earn a livelihood. There are strong arguments that these rights (and others) would be disproportionately affected if a professional were prevented from properly defending himself or herself in fitness to practise proceedings because he or she could not disclose personal data.

DAC Beachcroft raised this issue with both Tusla and CORU. The issue is of fundamental importance to all the professionals under CORU (but most particularly social workers because the cases involve a number of individuals and families and not just one individual as may be the case with a physiotherapist for example) as the fitness to practise process would be rendered unfair if professionals could not disclose data in relation to complaints against them.

Tusla subsequently confirmed the exceptions under the DPA listed above are relevant in the context of releasing third party personal data to CORU in order to defend a fitness to practise complaint and that it is arguable that a social work file can be released to CORU either under its own statutory powers or by applying the exceptions found in the DPA without requiring the consent of the third party.

However, it is important to point out that data protection is a complicated area of law and simply because it may be permissible to disclose personal data to CORU in one case does not mean that disclosure can necessarily be made in other cases. In other words, each case depends on its merits.

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