

Guidance Note: Retention Instructions and Data Protection requirements

The Inquiry has issued retention instructions to a range of institutions requesting the preservation of all records relating to the care of children so that they remain available for inspection by the Inquiry. Justice Goddard also stated in her opening statement on 9 July 2015 that *“No institution – whether they have received a letter or not – can be in any doubt of the extent of their duty to preserve records for the Inquiry, or of the consequences of failing to do so”* (paragraph 77).

The Inquiry has received a number of queries about the possibility that prolonged retention of personal data in accordance with the retention instructions might engage issues of compliance with the Data Protection Act 1998. The Inquiry has therefore consulted with the Information Commissioner’s Office and, having done so, issues this Guidance to clarify the position.

Under Section 21 of the Inquiries Act 2005 the Inquiry has the power to order the production of documents. Failure to comply with such an order without reasonable excuse is an offence punishable by imprisonment (Section 35 of the Inquiries Act 2005). It is also an offence for a person, during the course of an Inquiry, to destroy, alter or tamper with evidence that may be relevant to an Inquiry, or deliberately to do an act with the intention of suppressing evidence or preventing it being disclosed to the Inquiry.

Institutions therefore have an obligation to preserve records for the Inquiry for as long as necessary to assist the Inquiry. Prolonged retention of personal data by an organisation at the request of the Inquiry would not therefore contravene the Data Protection Act 1998 provided such information is restricted to that necessary to fulfil any potential legal duties that organisation may have in relation to the Inquiry. An institution may have to account for its previous activities to the Inquiry so retention of the data will be regarded as necessary for this purpose.

The obligation to the Inquiry to retain documents will remain throughout its duration. Institutions may also incur separate legal obligations to retain documents during the course of the Inquiry, for example in relation to other legal proceedings.