



## GDPR Article 28 3 (h) Advisory Notice

## What is an Article 28 advisory notice?

Under the GDPR Article 28 3 (h) a Processor should inform the Controller if they believe an instruction from the Controller might infringe the GDPR or any other data protection provisions.

## Why does this matter?

It is important that the processor adequately documents and records their compliance with this part of the regulation. If this is not recorded adequately, the processor could risk fines via GDPR and could be in breach of contract with the controller.

If you discover something you believe to be wrong, complete the Advisory Form below. This should be completed in conjunction with your Data Protection Officer [or other appropriate person].

You should talk to the client first and explain what the notice is and what they need to do with it. Send the notice to the client making sure that it goes to the client contact who has been named in the data processing agreement. You need to ensure you get written confirmation from the client that they have read and understood the contents.

## What happens next?

Your client may not agree with what you have discovered, in which case the client can inform you in writing that they believe the processing is lawful.

You should ask for evidence to support their position and if you are satisfied that the client has demonstrated that the instruction is compliant, you should complete the relevant boxes on the Notice, and keep the Notice and supporting evidence.

If you are not satisfied, you would need to carry out a risk assessment on the instruction from the client and determine the level of risk involved in complying.

You should consider the following:

- Compliance with data protection laws. If appropriate you should seek guidance from the ICO.
- CAP Code compliance if appropriate
- DMA Code compliance
- Industry best practice

You would then need to decide based on the outcome of the risk assessment whether you will comply with the instruction.

You should complete the risk assessment box on the Notice and inform the client of your decision.

If your client agrees with the Notice, you can give advice as to how to overcome the infringement, but it is important to stress that you are not giving legal advice.

If your client asks for further information on any solution suggested, please refer them to their DPO [or other appropriate person].

**You will find the Advisory Notice template on the following pages – these are the pages which you can use to inform a client of a potential non-compliance instruction.**

# GDPR Article 28 3 (h) Advisory Notice

## What is an Article 28 3 (h) Advisory Notice?

Under the GDPR Article 28 3 (h) a processor should inform the controller if they believe an instruction from the controller might infringe the GDPR or any other data protection provisions.

Sending an advisory notice is a legal requirement under GDPR but also helps us to protect our clients from fines and reputational loss.

We as processor under the data processing agreement dated XX believe that an instruction received from you under this agreement might be an infringement of the GDPR or other data protection legislation.

This document details what we believe is wrong. Once you have received this advisory notice, we ask that you confirm to us in writing that you have read and understood the contents.

## What do you need to do?

You may not agree with this Advisory Notice. If you do not, please inform us that you believe the processing is lawful and provide evidence of compliance.

If we agree that the proposed processing is compliant, one of our senior staff will override the advisory, record this and your instructions will be followed.

If you agree with this Advisory Notice, please contact our named contact to discuss.

We may give advice as to how to overcome the issue, however, none of the advice given constitutes legal advice.

If you require legal advice, you must consult a solicitor.

Client/Controller name	
Date	
Client/Controller representative name (must be the contact named in the data processing agreement)	
Processor contact	
Non-compliance issue. <i>(Describe the details of the non-compliance, including the regulations or best practice being breached)</i>	
Inserted image of screen shots or locations of examples.	
Date advisory notice sent to client	
Record any potential risks to personal data caused by this data processing.	
Advisory overridden: Authorised by:	
Reason for override:	
Risk assessment outcome: if a risk assessment is carried out, record here the outcome.	