

## **Data Protection Act 1998**

### **Monetary Penalty Notice**

**Dated: 30 May 2013**

**Name: Halton Borough Council**

**Address: Municipal Building, Kingsway, Widnes, Cheshire WA8 7QF**

#### **Statutory framework**

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1. Halton Borough Council is the data controller, as defined in section 1(1) of the Data Protection Act 1998 (the "Act"), in respect of the processing of personal data carried out by Halton Borough Council and is referred to in this notice as the "data controller". Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data in respect of which it is the data controller.
2. The Act came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the "1984 Act"). By virtue of section 6(1) of the Act, the office of the Data Protection Registrar originally established by section 3(1) (a) of the 1984 Act became known as the Data Protection Commissioner. From 30 January 2001, by virtue of section 18(1) of the Freedom of Information Act 2000 the Data Protection Commissioner became known instead as the Information Commissioner (the "Commissioner").
3. Under sections 55A and 55B of the Act (introduced by the Criminal Justice and Immigration Act 2008 which came into force on 6 April 2010) the Commissioner may, in certain circumstances, where there has there been a serious contravention of section 4(4) of the Act, serve a monetary penalty notice on a data controller requiring the data controller to pay a monetary penalty of an amount determined by the Commissioner and specified in the notice but not exceeding £500,000. The Commissioner has issued Statutory Guidance under section 55C(1) of the Act about the issuing of monetary penalties which is published on the Commissioner's website. It should be read in conjunction with the Data Protection (Monetary Penalties and Notices) Regulations 2010 and the Data Protection (Monetary Penalties) Order 2010.

## Power of Commissioner to impose a monetary penalty

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- (1) Under section 55A of the Act the Commissioner may serve a data controller with a monetary penalty notice if the Commissioner is satisfied that –
  - (a) there has been a serious contravention of section 4(4) of the Act by the data controller,
  - (b) the contravention was of a kind likely to cause substantial damage or substantial distress, and
  - (c) subsection (2) or (3) applies.
- (2) This subsection applies if the contravention was deliberate.
- (3) This subsection applies if the data controller –
  - (a) knew or ought to have known –
    - (i) that there was a risk that the contravention would occur, and
    - (ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but
  - (b) failed to take reasonable steps to prevent the contravention.

## Background

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4. On Friday 25 May 2012, a grade 2 clerical officer working in the data controller's administrative shared service sent a letter from the adoptive parents to the birth mother about her child's progress under a post-adoption agreement. However, the clerical officer mistakenly also sent the birth mother a covering letter which showed the adoptive parents' home address. The birth mother then passed this information to her parents who had been opposed to the adoption. They then wrote to the adoptive parents seeking contact.
5. Subsequently, the grandparents made an application to the Court for direct contact with their grandchild, which was refused following two hearings. The judge expressed his concern that the grandparents had

been able to contact the adoptive parents which was inappropriate. The grandparents were therefore ordered to sign undertakings to the Court that they would not contact their grandchild or the adoptive parents other than through the data controller's "letterbox" procedure, which is intended to prevent each side from knowing the contact details of the other.

6. The Commissioner understands that the clerical officer normally worked for two teams in rotation but on this particular day she had been asked to cover in the team she was not due to work in that week, as a colleague was on leave. The clerical officer was then dealing with a number of "letterbox" letters, which she mistakenly thought were a priority that had to be distributed quickly, so she took these with her when reporting to the other team's office to cover telephones there.
7. The clerical officer was apparently under the impression that any checks needed by social workers had already been carried out and that the correspondence was simply for filing and distribution. In addition, there was no peer-checking process in place before the "letterbox" letters were distributed by the clerical officer. The data controller has now implemented a clear checklist of requirements before "letterbox" letters can be distributed, together with a peer-checking process for work carried out by staff in the administrative shared service.

### **Grounds on which the Commissioner proposes to serve a monetary penalty notice**

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The relevant provision of the Act is the Seventh Data Protection Principle which provides, at Part I of Schedule 1 to the Act, that:

*"Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data".*

Paragraph 9 at Part II of Schedule 1 to the Act further provides that:

*"Having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to -*

*(a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle, and*

*(b) the nature of the data to be protected”.*

In deciding to issue this Notice of Intent, the Commissioner has considered the facts of the case and the deliberations of those within his office who have recommended this course of action. In particular, he has considered whether the criteria for the imposition of a monetary penalty have been met; whether, given the particular circumstances of this case and the underlying objective in imposing a penalty, the imposition of such a penalty is justified; and whether the amount of the proposed penalty is proportionate.

- The Commissioner is satisfied that there has been a serious contravention of section 4(4) of the Act.

In particular, the data controller had failed to take appropriate organisational measures against unauthorised processing of personal data, such as having a clear checklist of requirements before “letterbox” letters could be sent out, together with a peer-checking process for staff working in the administrative shared service.

The Commissioner considers that the contravention is serious because any measures in place did not ensure a level of security appropriate to the harm that might result from such unauthorised processing and the nature of the data to be protected.

- The Commissioner is satisfied that the contravention is of a kind likely to cause substantial distress. Confidential and sensitive personal data was disclosed to unauthorised third parties due to the inappropriate organisational measures taken by the data controller. The failure to take appropriate organisational measures has the potential to cause substantial distress to data subjects whose confidential and sensitive personal data has been disclosed to third parties who have no reason to see it.

In this particular case, the data subjects did suffer from substantial distress, knowing that their confidential and sensitive personal data had been disclosed to third parties who should not have seen it. This matter is aggravated by the fact that the unauthorised third parties attempted to contact the data subjects in circumstances that were considered by a judge to be inappropriate. In this context it is important to bear in mind that one of the data subjects was a vulnerable child.

- The Commissioner is satisfied that section 55A(3) of the Act applies in that the data controller knew or ought to have known that there was a risk that the contravention would occur, and that such a contravention would be of a kind likely to cause substantial distress, but failed to take

reasonable steps to prevent the contravention.

The Commissioner has taken this view because staff working in the data controller's administrative shared service were routinely required to deal with "letterbox" letters and the data controller would have been aware of the confidential and sensitive nature of the personal data they were dealing with.

In the circumstances, the data controller knew or ought to have known that there was a risk that the contravention would occur unless reasonable steps were taken to prevent the contravention, such as having a clear checklist of requirements before "letterbox" letters could be sent out, together with a peer-checking process for staff working in the administrative shared service.

Further, it should have been obvious to the data controller that such a contravention would be of a kind likely to cause substantial distress to the data subjects due to the nature of the data involved.

### **Aggravating features the Commissioner has taken into account in determining the amount of a monetary penalty**

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#### *Effect of the contravention*

- Unauthorised third parties attempted to contact the data subjects in circumstances that were considered by a judge to be inappropriate

#### *Impact on the data controller*

- Data controller is a public authority so liability to pay a monetary penalty does not fall on an individual
- Sufficient financial resources to pay a monetary penalty up to the maximum without causing undue financial hardship. The data controller is a unitary local authority with net revenues in excess of £120 million per year

### **Mitigating features the Commissioner has taken into account in determining the amount of the monetary penalty**

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#### *Nature of the contravention*

- There were no similar security breaches as far as the Commissioner is aware

### *Effect of the contravention*

- Unauthorised third parties were ordered to sign undertakings to the Court that they would not contact the data subjects other than through the data controller's "letterbox" procedure

### *Behavioural issues*

- Voluntarily reported to the Commissioner's office
- Remedial action has now been taken
- Fully co-operative with the Commissioner's office

### *Impact on the data controller*

- Liability to pay monetary penalty will fall on the public purse although the penalty will be paid into the Consolidated Fund
- Significant impact on reputation of data controller as a result of this security breach

## **Other considerations**

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- The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with the Act. This is an opportunity to reinforce the need for data controllers to review the handling of confidential and sensitive personal data and to ensure that appropriate and effective security measures are applied.

## **Notice of Intent**

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A notice of intent was served on the data controller dated 12 March 2013. The Commissioner received written representations from the data controller's Chief Executive dated 11 April 2013. The Commissioner has considered the written representations made in relation to the notice of intent when deciding whether to serve a monetary penalty notice. In particular, the Commissioner has taken the following steps:

- reconsidered the amount of the monetary penalty generally, and whether it is a reasonable and proportionate means of achieving the objective which the Commissioner seeks to achieve by this imposition;
- ensured that the monetary penalty is within the prescribed limit of £500,000; and

- ensured that the Commissioner is not, by imposing a monetary penalty, acting inconsistently with any of his statutory or public law duties and that a monetary penalty notice will not impose undue financial hardship on an otherwise responsible data controller.

## **Amount of the monetary penalty**

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The Commissioner considers that the contravention of section 4(4) of the Act is serious and that the imposition of a monetary penalty is appropriate. Further that a monetary penalty in the sum of £70,000 (Seventy thousand pounds) is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

In reaching this decision, the Commissioner considered other cases of a similar nature in which a monetary penalty had been imposed, and the facts and aggravating and mitigating factors noted above. In particular, the Commissioner noted the fact that the adopted child's grandparents had written to the adoptive parents and made contact in circumstances which were considered by the Court to be inappropriate and required formal undertakings to prevent future similar contact.

## **Payment**

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The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 3 July 2013 at the latest. The monetary penalty is not kept by the Commissioner but will be paid into the Consolidated Fund which is the Government's general bank account at the Bank of England.

## **Early payment discount**

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If the Commissioner receives full payment of the monetary penalty by 2 July 2013 the Commissioner will reduce the monetary penalty by 20% to £56,000 (Fifty six thousand pounds) but the data controller would then forfeit any right of appeal.

## **Right of Appeal**

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There is a right of appeal to the (First-tier Tribunal) General Regulatory Chamber against:

- a. the imposition of the monetary penalty  
and/or;
- b. the amount of the penalty specified in the monetary penalty notice.

Any Notice of Appeal should be served on the Tribunal by 5pm on 2 July 2013 at the latest. If the notice of appeal is served late the Tribunal will not accept it unless the Tribunal has extended the time for complying with this rule.

Information about appeals is set out in the attached Annex 1.

## **Enforcement**

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The Commissioner will not take action to enforce a monetary penalty unless:

- the period specified in the notice within which a monetary penalty must be paid has expired and all or any of the monetary penalty has not been paid;
- all relevant appeals against the monetary penalty notice and any variation of it have either been decided or withdrawn; and
- the period for the data controller to appeal against the monetary penalty and any variation of it has expired.

In England, Wales and Northern Ireland, the monetary penalty is recoverable by Order of the County Court or the High Court. In Scotland, the monetary penalty can be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court or any sheriffdom in Scotland.

Dated the 30<sup>th</sup> day of May 2013

Signed: .....

David Smith  
Deputy Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF



## **ANNEX 1**

### **SECTION 55 A-E OF THE DATA PROTECTION ACT 1998**

#### **RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER**

1. Section 48 of the Data Protection Act 1998 gives any person upon whom a monetary penalty notice or variation notice has been served a right of appeal to the (First-tier Tribunal) General Regulatory Chamber (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:-
  - a) that the notice against which the appeal is brought is not in accordance with the law; or
  - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.
3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals  
PO Box 9300  
Arnhem House  
31 Waterloo Way  
Leicester  
LE1 8DJ

  - a) The notice of appeal should be served on the Tribunal by 5pm on 2 July 2013 at the latest.
  - b) If your notice of appeal is late the Tribunal will not admit it unless the Tribunal has extended the time for complying with this rule.
4. The notice of appeal should state:-

- a) your name and address/name and address of your representative (if any);
  - b) an address where documents may be sent or delivered to you;
  - c) the name and address of the Information Commissioner;
  - d) details of the decision to which the proceedings relate;
  - e) the result that you are seeking;
  - f) the grounds on which you rely;
- d) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;
- e) if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not provided in time.
5. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.
6. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (Statutory Instrument 2009 No. 1976 (L.20)).

