

Data Protection Act 1998

Monetary Penalty Notice

Dated: 14 January 2014

Name: Department of Justice Northern Ireland

Address: Block B, Castle Buildings, Stormont Estate, Belfast BT4 3SG

Statutory framework

1. The Department of Justice Northern Ireland 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 the Department of Justice Northern Ireland 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 he 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 The Act came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the "1984 Act").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)

Power of Commissioner to impose a monetary penalty

- (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

4. The Compensation Agency Northern Ireland ('CANI') is an agency of the data controller. CANI deals with compensation claims arising out of terrorist incidents in Northern Ireland. CANI moved offices from Royston House in February 2012 and any marketable furniture then surplus to requirements was to be sold at auction.
5. A locked four drawer filing cabinet was then taken out of storage in Royston House without checking its contents and sent to a shared storage room at Millennium House. This storage room was used by any of CANI's departments to temporarily store all kinds of office

furniture prior to its disposal whether at auction or otherwise. Subsequently, the locked filing cabinet was presented to a local auctioneer for a valuation again without checking its contents. The Commissioner understands that the key to the filing cabinet had been mislaid.

6. The locked filing cabinet was transported to the local auction (as part of a lot of 10) and sold to a buyer on 12 May 2012 who forced the lock and discovered that it contained official looking papers dating from the mid 1970's to 2005. Fortunately, the buyer shut the filing cabinet and immediately contacted the Police Service Northern Ireland ('PSNI') who took possession of the papers and returned them to CANI.
7. The official papers contained (among other things) a limited amount of confidential, ministerial advice and highly sensitive personal data relating to victims of a terrorist incident, the injuries suffered, their family details including addresses and in some cases the amount of compensation offered by CANI.
8. Although there was an overarching expectation that personal data would be handled securely, the only written instruction to staff in relation to this office move was a Chief Executive's Notice which stated that 'Heads of Branch are asked to do a quick check around their offices to ensure that all cupboards, pedestals, cabinets etc. have been accounted for (know where they are going i.e. moving or staying) and that the contents have been packed or disposed of'.
9. The Commissioner understands that remedial action has now been taken by the data controller which includes implementing detailed procedures for the removal of cupboards, pedestals and filing cabinets etc. from one office location to another (including furniture that is locked and/or kept in storage) to ensure that, in future, any personal data contained in such furniture will be disposed of promptly and securely.

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

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 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 Monetary Penalty Notice, 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 monetary 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 the Seventh Data Protection Principle.

In particular, the data controller failed to take appropriate organisational measures against unauthorised processing and accidental loss of confidential and sensitive personal data such as having detailed procedures in place for the removal of cupboards, pedestals and filing cabinets etc. from one office location to another.

The Commissioner considers that the contravention is serious because an office move is normally a risky operation in terms of ensuring that personal data is handled securely during the move. Therefore, the Commissioner would have expected to see much tighter controls in place bearing in mind the political and highly sensitive nature of the personal data contained in the filing cabinet.

- The Commissioner is satisfied that the contravention is of a kind likely to cause substantial distress. Confidential and sensitive personal data was at risk of unauthorised processing and accidental loss due to the inappropriate organisational measures taken by the data controller.

Given the nature of the information and the circumstances which led to it being held by the data controller the failure to take appropriate organisational measures was likely to cause substantial

distress to the data subjects even if this is simply by knowing that their confidential and sensitive personal data has been accessed by the buyer who had no right to see that information.

Further, the data subjects would be likely to be distressed by justifiable concerns that their data may be further disseminated even if those concerns do not actually materialise.

In any case it is merely fortuitous that the buyer immediately contacted PSNI rather than contacting the media or otherwise seeking to exploit the information for his own ends. This confirms that the breach was of a kind likely to cause substantial distress even if it can be argued that substantial distress was not actually caused in this case.

It is noted that the data controller decided not to inform the affected data subjects following this security breach so as not to cause further distress.

- 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 of the political and highly sensitive nature of the personal data contained in the filing cabinet. The data controller was used to dealing with such information and had taken some steps to safeguard the official papers by locking them in a fireproof filing cabinet in a storage room even though the steps taken proved to be inadequate.

In the circumstances, the data controller knew or ought to have known there was a risk that the contravention would occur unless reasonable steps were taken to prevent the contravention such as having detailed procedures in place for the removal of cupboards, pedestals and filing cabinets etc. from one office location to another.

In the Commissioner's view it should have been obvious to the data controller (who had responsibility for CANI) 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

Behavioural issues

- An investigation revealed three other 'near misses' arising out of this office move

Impact on the data controller

- Sufficient financial resources to pay a monetary penalty up to the maximum without causing undue financial hardship.
- The data controller is a public authority, so liability to pay any monetary penalty will not fall on any individual

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

Effect of the contravention

- No evidence that the official papers have been further disseminated as far as the Commissioner is aware

Behavioural issues

- Remedial action has now been taken
- Fully cooperative with ICO
- Full investigation carried out

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

- The Commissioner's underlying objective in imposing a monetary penalty is to promote compliance with the Act and this is an opportunity to reinforce the need for data controllers to ensure that appropriate and effective security measures are applied to personal data
- The Fifth Data Protection Principle at Part I of Schedule 1 to the Act was also contravened by the data controller in that data was kept for longer than was necessary for its purposes

Notice of Intent

A notice of intent was served on the data controller dated 15 November 2013. The Commissioner received written representations from the data controller's Legal Director dated 18 December 2013 in response to the notice of intent. In the circumstances, the Commissioner has now 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

The Commissioner considers that the contravention of the seventh data protection principle is "very serious" and that the imposition of a monetary penalty is appropriate. Further that a monetary penalty in the sum of **£185,000** (One hundred and eighty five 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 has been imposed and the facts and aggravating and mitigating features referred to above.

Payment

The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 14 February 2014 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

If the Commissioner receives full payment of the monetary penalty by 13 February 2014 the Commissioner will reduce the monetary penalty by 20% to **£148,000** (One hundred and forty eight thousand pounds). You should be aware that if you decide to take advantage of the early payment discount you will forfeit your right of appeal.

Right of Appeal

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 13 February 2014 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

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 14th day of January 2014

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 13 February 2014 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)).