

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

DATED: 9 February 2018

To: Gain Credit LLC

Of: Wisteria Grange Barn Pikes End, Pinner, HA5 2EX

1. Gain Credit LLC ("GC LLC"), formerly Lending Stream LLC, is a "data controller" as defined in section 1(1) of the Data Protection Act 1998 ("DPA").
2. Section 4(4) of the DPA provides that, subject to section 27(1), it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.
3. The Information Commissioner ("Commissioner") has considered a request for assessment made under section 42 of the DPA by [REDACTED]
[REDACTED]
("complainant").
4. The request for assessment concerned the failure by GC LLC to respond to a subject access request made by the complainant on 16 January 2017 (attached) in compliance with the requirements of section 7 of the DPA. The subject access request was sent with a cheque in the sum of £10.00 as a processing fee which was cashed on 19 January 2017.

5. The complainant received no response to the subject access request and notified the Commissioner of GC LLC's failure to respond on 22 February 2017. The Commissioner thereafter took steps to engage with GC LLC.
6. In particular, the Commissioner has sent a substantial amount of correspondence to GC LLC, via email to a verified email account, in respect of the complainant's subject access request, specifically dated 18 May 2017; 7 June 2017; 13 June 2017; and 3 July 2017, requesting that it provides a response to the complainant, and highlighting its legal obligations in accordance with the rights of 'data subjects' under section 7 of the DPA.
7. It is noted that late into the Commissioner's investigation GC LLC responded to indicate that they would not comply with the subject access request as the complainant had recently initiated County Court proceedings to recover his £10.00 processing fee cheque, and they therefore deemed the request to be 'withdrawn'. The Commissioner, on 31 July 2017 and 22 August 2017, confirmed to GC LLC that compliance with the complainant's subject access request was obligatory notwithstanding the complainant's intended claim.
8. Despite the above, GC LLC has to date failed to comply with the complainant's subject access request.
9. The Commissioner has considered the issues arising out of the request for assessment referred to in paragraph 3 above, in addition to further correspondence that the Commissioner has sent to GC LLC concerning this case (summarised above, and attached).
10. The Commissioner has considered GC LLC's compliance with the provisions of the DPA in light of this matter. The relevant provisions of the DPA are the Sixth Data Protection Principle and section 7.
11. The Sixth Data Protection Principle provides at Part I of Schedule 1 to the DPA that:

"Personal data shall be processed in accordance with the rights of data subjects under this Act."

12. Paragraph 8(a) of Part II of Schedule 1 to the DPA further provides that:

"A person is to be regarded as contravening the sixth principle if, but only if, he contravenes section 7 by failing to supply information in accordance with that section."

13. Section 7 of the DPA states:

"(1) Subject to the following provisions of this section and to sections 8, 9 and 9A, an individual is entitled –

- (a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,*
- (b) if that is the case, to be given by the data controller a description of*
 - (i) the personal data of which that individual is the subject,*
 - (ii) the purposes for which they are being or are to be processed,*
and
 - (iii) the recipients or classes of recipients to whom they are or may be disclosed,*

(c) to have communicated to him in an intelligible form –

(i) the information constituting any personal data of which that individual is the data subject, and

(ii) any information available to the data controller as to the source of those data, ...”


14. The Commissioner is of the view that GC LLC has contravened the Sixth Data Protection Principle in that, contrary to section 7, it has failed to inform the complainant, without undue delay, whether personal data of which this individual was the data subject were being processed by or on behalf of GC LLC and, where that was the case, failed, without undue delay, to have communicated to him in an intelligible form such information as may constitute such personal data.
15. The Commissioner considered, as she is required to do under section 40(2) of the DPA when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner takes the view that damage or distress to the complainant is likely as a result of him being denied the opportunity of correcting inaccurate personal data about him, which may be processed by GC LLC, because he is unable to establish what personal data are being processed within the statutory timescale.
16. In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of her powers under section 40 of the DPA, she requires that the data controller shall within 30 days of the date of this Notice take steps to:

Inform the complainant whether the personal data processed by GC LLC includes personal data of which the complainant is the data subject and shall supply him with a copy of any such personal data so processed in accordance with the requirements of section 7 of the DPA and the Sixth Data Protection Principle in that respect, subject only to the proper consideration and application of any exemption from, or modification to, section 7 of the DPA provided for in or by virtue of Part IV of the DPA which may apply.

17. Failure to comply with this Notice is a criminal offence.
18. There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 1.

Dated the 9th day of February 2018

Signed

A large black rectangular redaction box covering the signature of Stephen Eckersley.

Stephen Eckersley
Head of Enforcement
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (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 she ought to have exercised her 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
Leicester
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

The notice of appeal should be served on the Tribunal within 28 days of the date on which the enforcement notice was sent.

4. 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)).