

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Norfolk County Council

Of: County Hall, Martineau Lane, Norwich, Norfolk NR1 2DH

1. The Information Commissioner ("Commissioner") has decided to issue Norfolk County Council ("Norfolk") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA"). The penalty is being issued because of a serious contravention of the seventh data protection principle by Norfolk.
2. This notice explains the Commissioner's decision.

Legal framework

3. Norfolk is a data controller, as defined in section 1(1) of the DPA in respect of the processing of personal data. Section 4(4) of the DPA provides that, subject to section 27(1) of the DPA, 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.
4. The relevant provision of the DPA is the seventh data protection principle which provides, at Part I of Schedule 1 to the DPA, 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".

5. Paragraph 9 at Part II of Schedule 1 to the DPA 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".

6. Under section 55A (1) of the DPA 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 DPA 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.

7. The Commissioner has issued statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties that has been published on the ICO's website. The Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 prescribe that the amount of any penalty determined by the Commissioner must not exceed £500,000.

8. The DPA implements European legislation (Directive 95/46/EC) aimed at the protection of the individual's fundamental right to the protection of personal data. The Commissioner approaches the data protection principles so as to give effect to the Directive.

Background to the case

9. On 14 April 2014, a third party collected some redundant furniture from Norfolk as part of an office move including desks, pedestals and a number of filing cabinets. They had been used by the children's social work team.

10. In the absence of a specific written procedure, it wasn't clear whether the children's social work team or business support were ultimately responsible for ensuring that the office furniture was empty prior to disposal.
11. On 18 April 2014, a member of the public bought one of the filing cabinets from a shop which sold second hand furniture and office equipment.
12. The filing cabinet was delivered to their home address. It contained case files including sensitive information relating to (among others) seven children and information about the [REDACTED]
[REDACTED].
13. Fortunately, it transpired that the other filing cabinets in the shop did not contain any sensitive information.
14. However, Norfolk did not keep a record of how many pieces of office furniture were collected by the third party and where they were eventually delivered.
15. The Commissioner has made the above findings of fact on the balance of probabilities.
16. The Commissioner has considered whether those facts constitute a contravention of the DPA by Norfolk and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

17. The Commissioner finds that Norfolk contravened the following provisions of the DPA:
18. Norfolk failed to take appropriate organisational measures against unauthorised processing of personal data in contravention of the seventh data protection principle at Part I of Schedule 1 to the DPA.
19. The Commissioner finds that the contravention is as follows. Norfolk did not have in place appropriate organisational measures for ensuring so far as possible that such an incident would not occur, i.e. for ensuring that the office furniture was empty prior to disposal.
20. In particular, Norfolk did not have an adequate written procedure governing how office furniture disposal should be managed.
21. The Commissioner is satisfied that Norfolk was responsible for this contravention.
22. The Commissioner has gone on to consider whether the conditions under section 55A DPA were met.

Seriousness of the contravention

23. The Commissioner is satisfied that the contravention identified above was serious due to the highly sensitive nature of some of the personal data that was left in the office furniture and the potential consequences. In those circumstances, Norfolk's failure to take adequate steps to safeguard against unauthorised access was serious.

24. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

Contravention of a kind likely to cause substantial damage and substantial distress

25. The relevant features of the kind of contravention are:
26. Norfolk was required to dispose of some redundant office furniture including desks, pedestals and a number of filing cabinets and ensure that they were empty prior to disposal. Such a process was likely to require guidance and oversight.
27. This is all the more so when highly sensitive information is concerned – in particular, as regards adults and children in vulnerable circumstances. This heightens the need for robust measures – in organisational and procedural terms – to safeguard the information. Norfolk appears to have overlooked the need to ensure that it had robust measures in place for no good reason.
28. The Commissioner therefore considers that, by reference to the features of the contravention, it was of a kind likely to cause distress to the affected individuals and, in particular, the [REDACTED] [REDACTED] had been accessed by an unauthorised third party.
29. Further, the affected individuals distressed by justifiable concerns that this information would be further disseminated even if those concerns do not actually materialise.

30. If this information has been misused by the person who had access to it, or if it was in fact disclosed to untrustworthy third parties, then the contravention would cause further distress to the affected individuals, and damage such as exposing the [REDACTED] to a reprisal attack or possible relocation.
31. The Commissioner considers that such damage or distress is likely to be substantial having regard to the number of affected individuals and the highly sensitive nature of some of the personal data that was held in the case files and the circumstances of the affected individuals.
32. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

Deliberate or foreseeable contravention

33. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that Norfolk's actions which constituted those contraventions were deliberate actions (even if Norfolk did not actually intend thereby to contravene the DPA).
34. The Commissioner considers that in this case Norfolk did not deliberately contravene the DPA in that sense. She considers that the inadequacies outlined above were matters of serious oversight rather than deliberate intent to ignore or bypass the provisions of the DPA.
35. The Commissioner has gone on to consider whether Norfolk knew or ought reasonably to have known that there was a risk that this contravention would occur. She is satisfied that this condition is met, given that the children's social work team who routinely handled highly

sensitive personal data were undergoing an office move. Norfolk ought reasonably to have been aware that it needed to ensure so far as possible that the office furniture was empty prior to disposal.

36. In the circumstances, Norfolk ought reasonably to have known that there was a risk that this contravention would occur unless it ensured the office furniture disposal process was governed by an adequate written procedure.
37. Second, the Commissioner has considered whether Norfolk knew or ought reasonably to have known that the contravention would be of a kind likely to cause substantial damage and distress. She is satisfied that this condition is met, given that Norfolk was aware of the highly sensitive information that was routinely handled by the children's social work team. Norfolk ought to have known that it would cause substantial damage and distress if the information was used in ways the affected individuals did not envisage.
38. Therefore, it should have been obvious to Norfolk that such a contravention would be of a kind likely to cause substantial damage and substantial distress to the affected individuals.
39. Third, the Commissioner has considered whether Norfolk failed to take reasonable steps to prevent the contravention. Again, she is satisfied that this condition is met. Reasonable steps in these circumstances would have entailed putting in place an adequate written procedure governing how office furniture disposal should be managed. Norfolk did not take that step. The Commissioner considers there to be no good reason for that failure.

40. The Commissioner is therefore satisfied that condition (c) from section 55A (1) DPA is met.

The Commissioner's decision to impose a monetary penalty

41. For the above reasons, the Commissioner considers there to have been a serious contravention of the seventh data protection principle on the part of Norfolk with respect to the disposal of the office furniture. The contravention was of a kind likely to cause substantial damage and substantial distress. Norfolk knew or ought to have envisaged those risks and it did not take reasonable steps to prevent the contravention. The conditions for issuing a monetary penalty are met in this case.
42. The Commissioner is satisfied that the conditions from section 55A(1) DPA have been met in this case. She is also satisfied that section 55A(3A) and the procedural rights under section 55B have been complied with.
43. The latter has included the issuing of a Notice of Intent dated 21 December 2016, in which the Commissioner set out her preliminary thinking.
44. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
45. The Commissioner has considered whether, in the circumstances, she should exercise her discretion so as to issue a monetary penalty. She has taken into account the representations made in response to the Notice of Intent and in other correspondence on this matter.

46. The Commissioner has also considered whether the contravention identified above could be characterised as one-off events or attributable to mere human error. She does not consider that the contravention could be characterised in those ways.
47. The Commissioner has concluded that it is appropriate for her to exercise her discretion in favour of issuing a monetary penalty in the circumstances. The contravention is serious in terms of both Norfolk's deficiencies and the impact such deficiencies were likely to have on the affected individuals.
48. The issuing of a monetary penalty in this case would be fair and just. It would accord with the Commissioner's statutory guidance and regulatory objectives. It would act as an encouragement to ensure that such deficiencies are not repeated elsewhere.
49. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.
50. The Commissioner has taken into account the following **mitigating features** of this case:



- The information in the filing cabinet was recovered from the member of the public after eight days, as soon as Norfolk was notified.
- Norfolk has taken remedial action.
- Norfolk referred this incident to the Commissioner and was co-operative during her investigation.

- A monetary penalty may have a significant impact in Norfolk's reputation and (to some extent) its resources.

51. The Commissioner has taken into account the following **aggravating feature** of this case:

- Some of the office furniture is still unaccounted for.

52. The Commissioner's underlying objective in imposing a monetary penalty notice is to promote compliance with the DPA 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.

53. Taking into account all of the above, the Commissioner has decided that the appropriate amount of the penalty is **£60,000 (Sixty thousand pounds)**.

Conclusion

54. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **19 April 2017** 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.

55. If the Commissioner receives full payment of the monetary penalty by **18 April 2017** the Commissioner will reduce the monetary penalty by 20% to **£48,000 (Forty eight thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

56. There is a right of appeal to the First-tier Tribunal (Information Rights) against:
- a) the imposition of the monetary penalty and/or;
 - b) the amount of the penalty specified in the monetary penalty notice.
57. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
58. Information about appeals is set out in Annex 1.
59. The Commissioner will not take action to enforce a monetary penalty unless:
- the period specified within 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 appealing against the monetary penalty and any variation of it has expired.
60. 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 of any sheriffdom in Scotland.

Dated the 15th day of March 2017

Signed

Stephen Eckersley
Head of Enforcement
Information Commissioner's Office
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 (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
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

- a) The notice of appeal should be sent so it is received by the Tribunal within 28 days of the date of the notice.
 - 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;
 - g) you must provide with the notice of appeal a copy of the monetary penalty notice or variation notice;
 - h) 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 (Information Rights) 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)).