

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: Chief Constable of Greater Manchester Police

Of: Central Park, Northampton Road, Manchester M40 5BP

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

Legal framework

3. GMP 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. The role of the NCA's Serious Crime Analysis Section ("SCAS") is to identify potential serial killers and serial rapists at an early stage in their offending history. Police forces nationwide are required to provide SCAS with cases that are considered suitable for such an assessment.

10. On [REDACTED] 2015, GMP sent three unencrypted DVD's to SCAS by Recorded Delivery.
11. The DVD's each contained a video of a police interview with [REDACTED] victims in ongoing cases. SCAS did not receive the DVD's and they have not been recovered to date.
12. The Commissioner has made the above findings of fact on the balance of probabilities.
13. The Commissioner has considered whether those facts constitute a contravention of the DPA by GMP and, if so, whether the conditions of section 55A DPA are satisfied.

The contravention

14. The Commissioner finds that GMP contravened the following provisions of the DPA:
15. GMP failed to take appropriate organisational measures against unauthorised or unlawful processing of personal data and against accidental loss of personal data in contravention of the seventh data protection principle at Part I of Schedule 1 to the DPA.
16. The Commissioner finds that the contravention is as follows. GMP 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 DVD's would not be accidentally lost.
17. In particular, the unencrypted DVD's were sent to SCAS by Recorded Delivery.

18. This was an ongoing contravention from 2009 until GMP took remedial action following the security breach on [REDACTED] 2015. During this period, GMP sent [REDACTED] DVD's to SCAS.
19. The Commissioner is satisfied that GMP was responsible for this contravention.
20. The Commissioner has gone on to consider whether the conditions under section 55A DPA were met.

Seriousness of the contravention

21. The Commissioner is satisfied that the contravention identified above was serious. This is because the DVD's contained highly sensitive personal data.
22. In the circumstances, the Commissioner considers that the contravention was serious having regard to the number of affected individuals, the nature of the personal data involved and the possible consequences.
23. The Commissioner is therefore satisfied that condition (a) from section 55A (1) DPA is met.

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

24. The relevant features of the kind of contravention are:

25. DVD's containing videos of police interviews with [REDACTED] victims have been lost. The cases were ongoing and of a violent or sexual nature. The named victims could be seen talking openly in the videos.
26. The Commissioner considers that the contravention identified above had the following potential consequences:
 27. The contravention would cause distress to the victims who may suspect that their highly sensitive personal data has been accessed by individuals who have no right to see that information.
 28. Further, the victims would be distressed by justifiable concerns that their data has been further disseminated even if those concerns do not actually materialise.
 29. In this context it is important to bear in mind that the victims were vulnerable and had already endured distressing interviews with the police [REDACTED]
 30. If this information has been misused by those 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 victims such as intimidation and also damage by way of reprisal attacks.
 31. The Commissioner considers that the damage and/or distress described above were likely to arise as a consequence of the kind of contravention. In other words, the Commissioner's view is that there was a significant and weighty chance that a contravention of the kind described would have such consequences.

32. The Commissioner also considers that such damage and/or distress was likely to be substantial, having regard to the number of affected individuals and the nature of the personal data involved.
33. The Commissioner is therefore satisfied that condition (b) from section 55A (1) DPA is met.

Deliberate or foreseeable contravention

34. The Commissioner has considered whether the contravention identified above was deliberate. In the Commissioner's view, this means that GMP's actions which constituted the contravention were deliberate actions (even if GMP did not actually intend thereby to contravene the DPA).
35. The Commissioner considers that in this case GMP did not deliberately contravene the DPA in that sense.
36. The Commissioner has gone on to consider whether the contravention identified above was negligent. First, she has considered whether GMP knew or ought reasonably to have known that there was a risk that this contravention would occur.
37. She is satisfied that this condition is met, given that GMP routinely handled videos of police interviews containing highly sensitive personal data. ACPO's guide for handling protectively marked material dated April 2007 (now NPCC) and the NCA's 'Data Handling' policy dated 11 October 2012 gave GMP the further option of sending the confidential DVD's by either Special Delivery or courier. The Commissioner understands that a technical solution such as encryption or remote access was not an option at the time of the security breach through no

fault of GMP. But ultimately, it was up to GMP to keep the DVD's secure.

38. GMP was also aware that SCAS only used Special Delivery to send confidential material by post, if required. Special Delivery is more secure than Recorded Delivery because an item is signed for every time it changes hands, and not just by the recipient. Royal Mail also treats an item as lost after five days instead of 10, and GMP could have liaised with its Security team much sooner.
39. In the circumstances, GMP ought reasonably to have known that the DVD's containing the police interviews would be vulnerable to a security breach in the absence of appropriate security measures.
40. Second, the Commissioner has considered whether GMP knew or ought reasonably to have known that the contravention would be of a kind likely to cause substantial damage or substantial distress. She is satisfied that this condition is met, given that GMP was aware of the graphic and distressing nature of the personal data contained in the videos. Therefore, it should have been obvious to GMP that such a contravention would be of a kind likely to cause substantial damage or substantial distress to the affected individuals.
41. Third, the Commissioner has considered whether GMP 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 sending the DVD's to SCAS either by Special Delivery or courier. GMP failed to take either of those steps. The Commissioner considers there to be no good reason for that failure.

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

The Commissioner's decision to impose a monetary penalty

43. For the above reasons, the Commissioner considers there to have been a serious contravention of the seventh data protection principle on the part of GMP with respect to the loss of the DVD's. The contravention was of a kind likely to cause substantial damage or substantial distress. GMP 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.
44. 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.
45. The latter has included the issuing of a Notice of Intent dated 22 December 2016, in which the Commissioner set out her preliminary thinking.
46. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
47. 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.

48. 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.
49. 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 GMP's deficiencies and the impact such deficiencies were likely to have on the affected individuals.
50. 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.
51. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.
52. The Commissioner has taken into account the following **mitigating features** of this case:
- GMP referred this incident to the Commissioner and SCAS.
 - GMP was co-operative during her investigation.
 - The information on the DVD's has not been further disseminated as far as the Commissioner is aware.
 - GMP notified the affected individuals and provided support.
 - GMP has taken remedial action until a technical solution can be found.
 - A monetary penalty may have a significant impact on GMP's reputation.

53. The Commissioner has taken into account the following **aggravating feature of this case:**
- The DVD's were not password protected.
54. 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 police forces to ensure that appropriate and effective security measures are applied to DVD's containing personal data.
55. Taking into account all of the above, the Commissioner has decided that the appropriate amount of the penalty is **£150,000 (One hundred and fifty thousand pounds)**.

Conclusion

56. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **31 May 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.
57. If the Commissioner receives full payment of the monetary penalty by **30 May 2017** the Commissioner will reduce the monetary penalty by 20% to **£120,000 (One hundred and twenty thousand pounds)**. However, you should be aware that the early payment discount is not available if you decide to exercise your right of appeal.

58. 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.

59. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.

60. Information about appeals is set out in Annex 1.

61. 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.

62. 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 2nd day of May 2017

Signed



Elizabeth Denham
Information Commissioner
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)).