

Data Protection Act 1998

Monetary Penalty Notice

Dated: 9 October 2012

Name: Norwood Ravenswood Limited

Address: Broadway House, 80-82 The Broadway, Stanmore HA7 4HB

Statutory framework

1. Norwood Ravenswood Limited 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 Norwood Ravenswood Limited 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 The Act came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the "1984 Act").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

- (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. On 5 December 2011, a social worker employed by the data controller (which was acting in this case as an adoption agency) obtained from two local authorities background reports relating to four children (aged 5 or 6) who were in care, so that she could inform the prospective adopters of any potential issues that may arise when caring for the children. The social worker went that evening to the home of the prospective adopters (a couple) to deliver the background reports by hand, but they were both out. The package would not fit through the letter-box so the social worker telephoned the prospective adopters to inform them that she had left the package in a concealed area at the side of the house. When the prospective adopters returned home

approximately 30 minutes later the package had disappeared.

5. The background reports contained detailed, confidential and highly sensitive personal data relating to the children and their birth families, including details of any abuse or neglect, medical histories, education and a chronology of the relevant local authority's interactions with their birth families. The Commissioner understands that the background reports have not been recovered despite an extensive search and, further, that the data controller had not kept any copies of the documents.
6. At the time of the security breach there was an overarching data protection policy on the data controller's intranet which the staff were aware of. However, there was no specific guidance on sending personal data to prospective adopters. In addition, the social worker had not received any training on data protection, despite the data controller's commitment to provide such training in its data protection policy.
7. Following the security breach, the data controller informed the two local authorities and took disciplinary action against the social worker. The Commissioner understands that the data controller has now taken remedial action which includes updating its data protection policy; developing specific guidance; providing appropriate staff training and anonymising any sensitive personal data sent to prospective adopters.

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 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”.

- 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 the accidental loss of personal data, such as having specific guidance, appropriate staff training and anonymising any sensitive personal data sent to prospective adopters.

The Commissioner considers that the contravention is serious because the measures did not ensure a level of security appropriate to the harm that might result from such accidental loss 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. In this particular case the contravention is likely to cause substantial distress to individuals who know or suspect that their confidential and sensitive personal data has been stolen by an individual who has no right to see that information. Further, they would be justifiably concerned that their data may be further disseminated and possibly misused even if those concerns do not actually materialise.

If the data is in fact disclosed to untrustworthy third parties then it is likely that the contravention would cause further distress to the data subjects.

This matter is aggravated by the fact that four of the data subjects were vulnerable children.

- 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 social workers employed by the data controller routinely handled adoption cases and the data controller would have been aware of the confidential and highly 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 specific guidance, appropriate staff training and anonymising any sensitive personal data sent to prospective adopters.

Further, it should have been obvious to the data controller who employed social workers 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

Nature of the contravention

- The data related to four data subjects who were all vulnerable children and their birth families
- Contravention was particularly serious because of the confidential and highly sensitive nature of the personal data

Effect of the contravention

- The background reports have still not been recovered and the data controller had not kept any copies of the documents

Impact on the data controller

- The data controller is a company limited by guarantee so liability to pay a monetary penalty will not fall on an individual
- Although a charity the data controller has substantial reserves to pay a monetary penalty up to the maximum without a significant impact on day to day services

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

Nature of the contravention

- No previous similar security breach that the Commissioner is aware of

Effect of the contravention

- To the Commissioner's knowledge the personal data has not been further disseminated

Behavioural issues

- Voluntarily reported to Commissioner's office
- Extensive search carried out albeit unsuccessful
- Local authorities notified of the security breach
- Remedial action has now been taken
- Fully cooperative with Commissioner's office

Impact on the data controller

- 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 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

A notice of intent was served on the data controller dated 29 August 2012. The Commissioner received written representations from the data controller's Director of Corporate Services in a letter dated 12 September 2012. 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

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.

Payment

The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by 13 November 2012 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 12 November 2012 the Commissioner will reduce the monetary penalty by 20% to £56,000 (Fifty six thousand pounds).

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 12 November 2012 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 9th day of October 2012

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 12 November 2012 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)).