

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

MONETARY PENALTY NOTICE

To: The Guide Dogs for the Blind Association

Of: Hillfields, Burghfield Common, Reading, RG7 3YG

Introduction

1. The Information Commissioner ("the Commissioner") has decided to issue the Guide Dogs for the Blind Association ("GDBA") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA").
2. The amount of the monetary penalty is £15,000.
3. During 2015 and 2016 the Commissioner corresponded with the GDBA about aspects of its data protection, privacy and marketing practices. This correspondence formed part of investigations by the Commissioner into the practices of a number of charities. Those investigations commenced following media articles about how certain charities had used the personal information of their donors.
4. The penalty is based on serious contraventions by the GDBA of the first and second data protection principles under Schedule 1 to the DPA.

5. Those contraventions are set out under two headings below. Each heading represents a distinct practice or activity in which the GDBA was or is engaged. Under each of the numbered headings below, the Commissioner explains: the findings of fact which she has reached on the balance of probabilities; why there has been a contravention of the DPA; and why the conditions for issuing a monetary penalty are satisfied. The Commissioner then explains why, in all the circumstances of the case, it is appropriate for a monetary penalty to be issued and why she considers the amount of £15,000 to be appropriate.

Legal framework

6. The GDBA is a data controller, as defined in section 1(1) of the DPA. 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.
7. 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 DPA must be applied so as to give effect to that Directive.
8. Schedule 1 to the DPA contains the eight data protection principles. In the present case, the relevant principles are the first and second, which stipulate as follows:

*1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -
(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*

2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

9. As regards the first data protection principle ("DPP1"), the interpretative provisions in Part II of Schedule 1 to the DPA provide that:

1(1) In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

(2)...

2(1) Subject to paragraph 3, for the purposes of the first principle personal data are not to be treated as processed fairly unless -

(a) in the case of data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3), and

(b) in any other case, the data controller ensures so far as practicable that, before the relevant time or as soon as practicable after that time, the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3).

(2) In sub-paragraph (1)(b) "the relevant time" means -

(a) the time when the data controller first process the data, or

(b) in a case where at that time disclosure to a third party within a reasonable period is envisaged -

(i) if the data are in fact disclosed to such a person within that period, the time when the data are first disclosed,

(ii) if within that period the data controller becomes, or ought to become, aware that the data are unlikely to be disclosed to such a person within that period, the time when the data controller does become, or ought to become, so aware, or

(iii) in any other case, the end of that period.

(3) The information referred to in sub-paragraph (1) is as follows, namely-

- (a) the identity of the data controller,*
- (b) if he has nominated a representative for the purposes of this Act, the identity of that representative,*
- (c) the purpose or purposes for which the data are intended to be processed, and*
- (d) any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.*

3. – (1) Paragraph 2(1)(b) does not apply where either of the primary conditions in sub-paragraph (2), together with such further conditions as may be prescribed by the Secretary of State by order, are met.

(2) The primary conditions referred to in sub-paragraph (1) are -

- (a) that the provision of that information would involve disproportionate effort, or*
- (b) that the recording of the information contained in the data by, or the disclosure of the data by, the data controller is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.*

4. [...]

10. As regards the second data protection principle ("DPP2"), the interpretative provisions in Part II of Schedule 1 to the DPA provide that:

5. The purpose or purposes for which personal data are obtained may in particular be specified—

- (a) in a notice given for the purposes of paragraph 2 by the data controller to the data subject, or*
- (b) in a notification given to the Commissioner under Part III of this Act.*

6. In determining whether any disclosure of personal data is compatible with the purpose or purposes for which the data were obtained, regard is to be had to the purpose or purposes for

which the personal data are intended to be processed by any person to whom they are disclosed.

11. The Commissioner has issued and published statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties.
12. 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.
13. In addition, the Commissioner considers that the GDBA is likely to have contravened regulation 21 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) ("PECR"). Although the Commissioner does not regard that contravention as a ground for issuing a monetary penalty in this case, she does consider it to be an aggravating factor which she is entitled to take into account in deciding whether, in all the circumstances, a monetary penalty is appropriate and, if so, what the amount of that penalty should be.
14. Regulation 21 of PECR provides that:

(1) A person shall neither use, nor instigate the use of, a public electronic communications service for the purposes of making unsolicited calls for direct marketing purposes where—
(a) the called line is that of a subscriber who has previously notified the caller that such calls should not for the time being be made on that line; or
(b) the number allocated to a subscriber in respect of the called line is one listed in the register kept under regulation 26.

(2) A subscriber shall not permit his line to be used in contravention of paragraph (1).

(3) A person shall not be held to have contravened paragraph (1)(b) where the number allocated to the called line has been

listed on the register for less than 28 days preceding that on which the call is made.

(4) Where a subscriber who has caused a number allocated to a line of his to be listed in the register kept under regulation 26 has notified a caller that he does not, for the time being, object to such calls being made on that line by that caller, such calls may be made by that caller on that line, notwithstanding that the number allocated to that line is listed in the said register.

(5) Where a subscriber has given a caller notification pursuant to paragraph (4) in relation to a line of his—

(a) the subscriber shall be free to withdraw that notification at any time, and

(b) where such notification is withdrawn, the caller shall not make such calls on that line.

1. The use of wealth screening companies to conduct wealth analysis

15. The GDBA used the services of a wealth screening company to analyse the financial status of its supporters in order to identify wealthy or high value individuals.
16. The personal data which the GDBA provided to the wealth screening company included supporters' names and addresses and the category of previous donations made to the GDBA by the relevant data subject.
17. The wealth screening company then analysed the data in order to identify wealthy or high value individuals amongst GDBA's donors.
18. The GDBA informed the Commissioner that it had undertaken such activity in respect of its entire database of donors in 2008 and 2012, and more specific activity in 2010 and 2015. The entire database in 2012 comprised the personal data of 1,770,221 data subjects and the

exercises in 2010 and 2015 comprised the personal data of 162,137 and 246,226 data subjects respectively.

19. The GDBA has told the Commissioner only that it has not undertaken wealth screening since April 2015.
20. The Commissioner has considered the wording of the GDBA's privacy notices in place at the relevant time. She has concluded that the GDBA's privacy notices did not indicate that personal data may be processed for the purpose of wealth analysis. Supporters have not been provided with sufficient information to enable them to understand what would be done with their personal data in terms of screening and thereby to enable them to make informed decisions on whether or not they wished to object to such processing.
21. Based on the findings of fact set out above, the Commissioner is satisfied that the GDBA has contravened DPP1. In particular, the GDBA has contravened the requirement to process personal data fairly, including because the use of individuals' data to investigate their wealth and their capacity to make or increase their donations to the GDBA will not be within the reasonable expectation of individuals, and the GDBA had not informed individuals that they would adopt these techniques.
22. The Commissioner is also satisfied that the GDBA has contravened DPP2. The processing of personal data for the purposes of wealth analysis is incompatible with the purposes for which the data were obtained. The data were obtained for administering the donation, and, if the individual consented, for marketing purposes. Donors were not informed that their data would be used for the purposes of wealth analysis and it is not something that would be within their reasonable

expectations. In determining whether data are being processed for an incompatible purpose, consideration should be given to the data subjects' reasonable expectations, the potential effect of the processing on those individuals, and what information has been provided to them in any privacy notice. These are similar considerations to assessing whether processing is fair.

23. The Commissioner is satisfied that these contraventions were serious. This is in particular because of (a) the length of time over which the above contraventions took place, (b) the number of data subjects whose rights were infringed and (c) the fact that those data subjects were likely to have been affected by those contraventions in significant practical ways, including by receiving additional marketing communications from the GDBA and (in at least some cases) providing the GDBA with additional financial support which would not have been directly solicited or requested but for the GDBA's use of wealth screening.
24. The Commissioner is satisfied that these contraventions were of a kind likely to cause substantial damage or substantial distress.
 - a) At least some proportion of data subjects are likely to be distressed if their personal data is shared with wealth management companies for the purposes of wealth screening without it being made sufficiently clear to the data subject that this would happen.
 - b) At least some proportion of data subjects are likely to suffer a financial impact and a diversion of time and resources in dealing with additional marketing approaches from the GDBA arising from its wealth screening practices.

c) Given the scale and duration of the contraventions, it is likely that such distress and/or damage would be substantial. At least some of the affected data subjects would have been likely to suffer substantial distress and/or damage. Alternatively, the cumulative levels of damage and/or distress of this kind of contravention would have been likely to be substantial.

25. The Commissioner is satisfied that these contraventions were deliberate, in the sense that the GDBA's actions as described above were deliberate. In other words, while the GDBA may not have deliberately set out to contravene the DPA, it deliberately acted in such a way that it did so.
26. Alternatively, the GDBA ought reasonably to have known that there was a risk of these contraventions occurring, and that they would be of a kind likely to cause substantial damage or distress. The GDBA obviously knew the terms of its own privacy notices. It ought reasonably to have known that data subjects would be unlikely to infer from the terms of those notices that their personal data would be processed for the purposes of wealth analysis.
27. Further, the GDBA failed to take reasonable steps to prevent these contraventions from occurring. It did not amend its privacy notices adequately.
28. The Commissioner is therefore satisfied that, as regards the GDBA's processing of personal data for the purposes of wealth analysis, the conditions for issuing a monetary penalty under section 55A DPA are satisfied.

2. Data-matching and tele-matching

29. Data-matching is the use of personal data to obtain and use other items of personal data which data subjects may have chosen not to provide to the data controller, such as email addresses or dates of birth. Tele-matching is data-matching by which telephone numbers which data subjects may have chosen not to provide are obtained and used.
30. The GDBA has used the services of an external company to undertake tele-matching on its behalf since at least 2010. The GDBA has 248,094 matched telephone numbers on its database, of which 165,730 are TPS registered. 163,180 of those have been added to the database since 6 April 2010.
31. The GDBA ceased its tele-matching activities in December 2016.
32. The GDBA also used the services of an external company to identify donors to the GDBA who had not agreed to gift aid their donations by reference to donations they had made to other charitable organisations where gift aid was agreed. Those identified donors would then be contacted by the GDBA with material about using gift aid.
33. The GDBA purchased 13,969 such pieces of data in the summer of 2014, and a further 12,704 in July 2015. The Commissioner was informed that in May 2015, such data concerning 11,110 data subjects who had donated to other charities [REDACTED] was purchased by the GDBA. The GDBA have explained that this was a one-off and the policy view has been taken that it was inappropriate and ought not to be repeated.

34. The Commissioner has considered the GDBA's privacy notices in place at the relevant time. She considers that these notices do not indicate that personal data will be used for data-matching and tele-matching purposes.
35. Based on the findings of fact set out above, the Commissioner is satisfied that the GDBA has contravened DPP1 – in particular, the requirement to process personal data fairly, including because it was unfair for the GDBA to use the data for data-matching and / or tele-matching purposes without the consent of the data subjects.
36. The Commissioner is also satisfied that the GDBA has contravened DPP2. The use of personal data for data-matching and tele-matching is incompatible with the purposes explained in the GDBA's privacy notices.
37. The Commissioner is satisfied that these contraventions were serious. This is in particular because of (a) the length over time over which the above contraventions took place, (b) the number of data subjects whose rights were infringed and (c) the fact that those data subjects were likely to have been affected by the contraventions in significant practical ways, including by receiving additional marketing communications from the GDBA and/or marketing communications using contact details which the data subjects may have declined to provide.
38. The Commissioner is satisfied that these contraventions were of a kind likely to cause substantial damage or substantial distress.
 - a) At least some proportion of data subjects are likely to be distressed if the GDBA uses personal data they have chosen to

provide in order to obtain and use personal data which they have chosen not to provide, in order to contact them for direct marketing purposes. They are also likely to be distressed by not being told in advance that their personal data may be used in these ways.

- b) At least some proportion of data subjects are likely to suffer a financial impact and a diversion of time and resources in dealing with additional marketing approaches from the GDBA arising from its data- and tele-matching practices.
- c) Given the scale and duration of the contraventions, it is likely that such distress and/or damage would be substantial. At least some of the affected data subjects would have been likely to suffer substantial distress and/or damage.

Alternatively, the cumulative levels of damage and/or distress of this kind of contravention would have been likely to be substantial.

- 39. The Commissioner is satisfied that these contraventions were deliberate, in the sense that the GDBA's actions as described above were deliberate. In other words, while the GDBA may not have deliberately set out to contravene the DPA, it deliberately acted in such a way that it did so.
- 40. Alternatively, the GDBA ought reasonably to have known that there was a risk of these contraventions occurring. The GDBA obviously knew the terms of its own privacy notices. It ought reasonably to have known that data subjects would be unlikely to infer from the terms of those notices that their personal data would be used for the purposes of data-matching and tele-matching.

41. Further, the GDBA failed to take reasonable steps to prevent these contraventions from occurring. It did not amend its privacy notices adequately, or obtain consent from the data subjects to the processing of data for these purposes.
42. The Commissioner is therefore satisfied that, as regards the GDBA's data-matching and tele-matching activities, the conditions for issuing a monetary penalty under section 55A DPA are satisfied.

Additional contravention: regulation 21 PECR

43. The Commissioner also wishes to draw attention to the following likely contravention of regulation 21 of PECR.
44. The GDBA has 248,094 matched telephone numbers on its database, of which 165,730 are TPS registered. 163,180 of those have been added to the database since 6 April 2010.
45. The GDBA does not have specific consent from data subjects for whom it has matched telephone numbers, but who are TPS registered, to receive live telephone calls from the GDBA. It relies on generic consents provided to it by its commercial third party tele-matching data provider. Those generic consents refer only to contact from third parties and not to the GDBA. The GDBA accept that until the summer of 2015, it did not screen its tele-matched calls against the TPS registration list.
46. The Commissioner considers that those telephonic contacts with persons who had not provided their specific consent to receiving direct marketing telephone calls from the GDBA and who were TPS registered contravened regulation 21 of PECR.

47. Given the size of the database of matched telephone numbers, and the GDBA's admitted past approach, the Commissioner is concerned that the contraventions of regulation 21 of PECR are likely to have been replicated in respect of a considerable number of other individuals. In the absence of specific evidence as to the number of contraventions and the points in time at which they occurred, she does not make a finding of contravention.
48. The Commissioner does not intend to issue this monetary penalty notice based on the above likely contravention. She records it here as an additional matter of concern which is relevant to the exercise of her discretion as regards the contraventions identified above, and as an appropriate aggravating factor.

The Commissioner's decision to issue a monetary penalty

49. For the reasons explained above, the Commissioner is satisfied that the conditions for issuing a monetary penalty have been met in this case.
50. Her reasons for reaching this view include (a) the number of contraventions for which the GDBA is liable, (b) the seriousness of those contraventions, including the number of affected data subjects, the number of instances of the same contraventions and the period of time over which the contraventions took place, (c) the likely impact of these kinds of contraventions, (d) the systemic deficiencies in the GDBA's data protection compliance which these contraventions demonstrate, and (e) the importance of deterring future contraventions of these kinds. The Commissioner considers that the latter objective would be furthered by the issuing of a monetary penalty notice in this case.

51. She is also satisfied that section 55A(3A) and the procedural rights under section 55B have been complied with. This has included the issuing of a Notice of Intent, in which the Commissioner set out her provisional thinking. In reaching her final view, the Commissioner has taken into account all of the representations made by GDBA.
52. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
53. 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. The Commissioner has concluded that it is appropriate for her to exercise her discretion in favour of issuing a monetary penalty in the circumstances.
54. 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, particularly in the charity sector.

The amount of the penalty

55. The Commissioner has taken into account the following **mitigating features** of this case:
 - The GDBA co-operated with the Commissioner's investigations.
 - The GBDA is a charity that seeks to further its objectives in the public interest, rather than for purely private interests or mere financial gain.
 - The GBDA has taken remedial action.

- The GDBA's practices may to an extent have reflected commonplace – albeit mistaken and unlawful – approaches in the charitable sector.
- The intended monetary penalty may have negative reputational consequences.

56. The Commissioner has also taken into account the following **aggravating features** of this case:

- The GDBA has followed the unlawful practices described above over a period of several years.
- The GDBA's practices appear to have been driven by financial gain. The fact that it is a charity is not an excuse in this respect. In fact, the public is arguably entitled to expect charities to be especially vigilant in complying with their legal obligations.
- The GDBA has contravened the fundamental rights of very large numbers of individuals to have their personal data processed in accordance with the DPA and Directive 95/46/EC.
- By failing adequately to explain to data subjects how their personal data would be used, the GDBA has deprived them of control and informed decision-making about their personal data to a significant extent.
- The GDBA's activities as described above have exposed the relevant data subjects to substantially distressing and/or damaging consequences, including intrusions into their privacy due to increased direct marketing communications from the GDBA. It is likely that many individuals will have been persuaded by the GDBA to increase their financial support. Those financial consequences will to a significant extent have flowed from the GDBA's unlawful data protection practices.
- It is likely that the GDBA have also contravened regulation 21 of PECR.

57. The Commissioner has also taken into account her underlying objective in imposing a monetary penalty notice, namely to promote compliance with the DPA.
58. Given the seriousness, nature and extent of the contraventions described above, the penalty imposed could have been significantly higher. However, in determining the amount of the penalty in this case the Commissioner has taken into account the circumstances of the contravention in the context of similar investigations into other charities. The Commissioner is mindful of the risk of adding to any distress that could be caused to donors by the contraventions. However, this should not be taken as an indication that the Commissioner will always reduce a penalty in such circumstances.
59. In all the circumstances, the Commissioner has decided that a penalty in the sum of **£15,000 (fifteen thousand pounds)** is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the penalty.

Conclusion

60. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **4 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.
61. If the Commissioner receives full payment of the monetary penalty by **3 May 2017** the Commissioner will reduce the monetary penalty by 20% to **£12,000 (twelve thousand four hundred pounds)**.

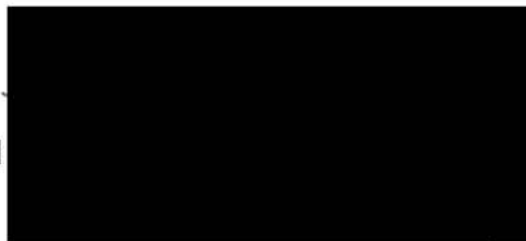
However, this early payment discount is not available if the right of appeal described below is exercised.

62. 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.
63. Any notice of appeal should be received by the Tribunal within 28 days of the date of this monetary penalty notice.
64. Information about appeals is set out in Annex 1.
65. 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.
66. 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 3rd day of April 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) 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 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 (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)).