

**DATA PROTECTION ACT 1998**

**SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

**MONETARY PENALTY NOTICE**

To: The Royal Society for the Prevention of Cruelty to Animals

Of: Wilberforce Way, Southwater, Horsham, RH13 9RS

**Introduction**

1. The Information Commissioner ("the Commissioner") has decided to issue the Royal Society for the Prevention of Cruelty to Animals ("the RSPCA") with a monetary penalty under section 55A of the Data Protection Act 1998 ("DPA").
2. The amount of the monetary penalty is £25,000.
3. The background to the monetary penalty is that, over the period September 2015 to May 2016, the Commissioner corresponded extensively with the RSPCA about numerous 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 RSPCA of the first and second data protection principles under Schedule 1 of the DPA.

5. Those contraventions are set out under four headings below. Each heading represents a distinct practice or activity in which the RSPCA 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 £25,000 to be appropriate.

### **Legal framework**

6. The RSPCA 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 of 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 explained further below, the underlined words from paragraph 2(3)(c) above are particularly relevant to the present case.

11. 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.*

12. The Commissioner has issued and published statutory guidance under section 55C (1) of the DPA about the issuing of monetary penalties.
13. 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.
14. The Commissioner issues this monetary penalty because of serious contraventions by the RSPCA of the provisions of the DPA set out above.

**1. Disclosure of personal data under the "Reciprocate" scheme**

15. A company called [REDACTED] which describes its activities as including "list broking", organises a scheme called "Reciprocate". That scheme enables participating charities to share or swap the personal data of donors or prospective donors.
16. Typically, the types of personal data involved include: unique reference number; name; address; last donation date; last donation amount; Gift Aid status; information about donation type (for example raffle, committed regular giving, etc.).
17. [REDACTED] has told the Commissioner that:

*"Reciprocate is a member-only scheme that enables participating charities to share supporter data and insight in a safe and controlled environment in order to support crucial fundraising objectives. It is the responsibility of all member charities to ensure that they have obtained the correct permission for sharing those details, as required by the [DPA]."*

18. The RSPCA's fair processing notice, in place as at April 2014, stated that:

*"The RSPCA may allow other organisations whose aims are in sympathy with our own or whose offers will benefit animal welfare to contact our supporters. If you do not wish to hear from them please tick the box."*

19. The RSPCA participated in the Reciprocate scheme over the period 1998-2015 inclusive. In each of those years, the RSPCA disclosed batches of records containing items of personal data such as those described at paragraph 16 above. The number of records disclosed in each of those years ranged between 105,697 and 794,768.
20. The RSPCA was unable to provide the Commissioner with details of the Reciprocate scheme's members or the specific organisations to whom it had disclosed records containing personal data over the period 1998-2015. The RSPCA maintain that disclosure of those records was however confined to "organisations whose aims are in sympathy with our own".
21. Based on the findings of fact set out above, the Commissioner is satisfied that the RSPCA contravened DPP1 – in particular, the requirement to process personal data fairly. This is because the terms of the RSPCA's fair processing notice were unduly vague and / or ambiguous and did not provide data subjects with adequate information as to how their personal data would be shared via the

Reciprocate scheme. Charities that wish to share/sell their marketing lists with other organisations must ensure that their donors were made aware of this when the personal details were collected and that specific consent to pass on the details was obtained. Consent must be freely given, specific and informed, and involve a positive indication signifying the data subject's agreement. Further, consent cannot be inferred just because personal data is to be shared with an organisation which has similar aims/objectives to the originating organisation. Informing individuals that their details will be shared with similar or partner organisations, is neither freely given nor specific and does not amount to a positive indication of consent.

22. The Commissioner is also satisfied, on the evidence available, that the RSPCA contravened DPP2. The use of personal data for the Reciprocate Scheme was incompatible with the purposes explained in the RSPCA's fair processing notices.
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 the contraventions in significant practical ways, including by being contacted by other charities soliciting financial contributions from the data subjects.
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 by one charity with another for the purposes of the latter's fundraising efforts

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 approaches from other members of Reciprocate.

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 RSPCA's actions as described above were deliberate. In other words, while the RSPCA may not have deliberately set out to contravene the DPA, it deliberately acted in such a way that it did so.
26. Alternatively, the RSPCA ought reasonably to have known that there was a risk of the contraventions occurring. The RSPCA obviously knew the terms of its own fair processing notice. It ought reasonably to have known that data subjects would be unlikely to understand from the notice how widely their personal data would be disclosed.
27. Further, the RSPCA failed to take reasonable steps to prevent these contraventions from occurring. It did not amend its fair processing notices adequately or withdraw from the Reciprocate scheme.



28. The Commissioner is therefore satisfied that, as regards the RSPCA's sharing of personal data under the Reciprocate scheme, the conditions for issuing a monetary penalty under section 55A DPA are satisfied.

## **2. Sharing of personal data despite opt-outs**

29. The second heading of contravention is linked to the first (the Reciprocate scheme). On 19 November 2015, the RSPCA reported to the Commissioner that the personal data (names, addresses and telephone numbers) of 15,028 supporters were shared with a third party or third parties via the Reciprocate scheme after the supporters' expressly opted out of their personal data being shared with other organisations.
30. Over the period April 2014 to June 2015, groups of such records were shared on 12 occasions. The RSPCA has told the Commissioner that, on each occasion, this occurred because the wrong dataset had been made available. In the event, each record was shared on between one and five occasions.
31. Based on the findings of fact set out above, the Commissioner is satisfied that the RSPCA contravened DPP1 – in particular, the requirement to process personal data fairly. This is because (a) the RSPCA's fair processing notice was unduly vague and / or ambiguous and did not provide data subjects with adequate information as to how their personal data would be shared via the Reciprocate scheme, and (b) the RSPCA treated the relevant data subjects unfairly by disclosing their personal data contrary to the wishes they expressed through their opt-outs.

32. The Commissioner is satisfied that the above contravention was serious. This is in particular because of (a) the length over time over which the above contravention 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 contravention in significant practical ways, including by being contacted by other charities soliciting financial contributions from the data subjects contrary to the clear wishes they had expressed through their opt-outs.
33. The Commissioner is satisfied that the contravention was 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 by one charity with another for the purposes of the latter's fundraising efforts without it being made sufficiently clear to the data subject that this would happen and in circumstances where they had expressly opted out of such sharing of their personal data.
  - 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 approaches from other members of Reciprocate.
  - c) Given the scale and duration of the contravention, 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.
34. The Commissioner is satisfied that, while the contravention was inadvertent, the RSPCA ought reasonably to have known that there

was a risk that it would occur. There were 12 instances of such unlawful disclosures over a 14-month period. A charity of the RSPCA's size and resources should have checked whether or not opt-outs were being respected as regards the personal data it shared through the Reciprocate scheme. It should have detected the problems that were occurring and taken steps to remedy them. It failed to do so.

35. The Commissioner is therefore satisfied that, as regards the RSPCA's sharing of personal data under the Reciprocate scheme in respect of individuals who had opted out of their personal data being shared with other organisations, the conditions for issuing a monetary penalty under section 55A DPA are satisfied.

### **3. The use of wealth management companies to conduct wealth analysis**

36. The RSPCA used the services of a number of wealth management companies to analyse the financial status of some of its supporters in order to estimate the likely financial support which those supporters could be persuaded to provide. Those wealth management companies were called [REDACTED]
37. The personal data which the RSPCA provided to those wealth management companies included supporters' names and addresses and, in some cases, contact numbers, number of communications sent by the RSPCA and number of donations made to the RSPCA by the relevant data subject.
38. The wealth management companies then analysed the data and provided the RSPCA with an indication of the estimated probability of each individual providing certain types of financial support.

39. The RSPCA informed the Commissioner that it was its common practice to use the services of wealth management companies as described above. The Commissioner understands that the RSPCA has undertaken such activity since at least 2010. She further understands that the RSPCA does not currently intend to cease such activity.
40. The RSPCA also confirmed that its practice is generally to provide such companies with its entire database, which contains the personal data of more than 7 million data subjects.
41. The Commissioner has considered the wording of the RSPCA's fair processing notices over the period since 2010 insofar as the RSPCA has been able to make those available to her. She has concluded that the RSPCA's fair processing 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.
42. Based on the findings of fact set out above, the Commissioner is satisfied that the RSPCA has contravened DPP1 – in particular, the requirement to process personal data fairly.
43. The Commissioner is also satisfied that the RSPCA has contravened DPP2. The processing of personal data for the purposes of wealth screening is not compatible with the purposes explained in the RSPCA's fair processing notices.

44. 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 RSPCA and (in at least some cases) providing the RSPCA with additional financial support which would not have been directly solicited or requested but for the RSPCA's use of wealth management companies.
45. 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 RSPCA 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.

46. The Commissioner is satisfied that these contraventions were deliberate, in the sense that the RSPCA's actions as described above were deliberate. In other words, while the RSPCA may not have deliberately set out to contravene the DPA, it deliberately acted in such a way that it did so.
47. Alternatively, the RSPCA ought reasonably to have known that there was a risk of these contraventions occurring. The RSPCA obviously knew the terms of its own fair processing notice. It ought reasonably to have known that data subjects would be unlikely to infer from those terms that their personal data would be processed for the purposes of wealth screening.
48. Further, the RSPCA failed to take reasonable steps to prevent these contraventions from occurring. It did not amend its fair processing notices adequately in sufficient time, or cease its wealth screening activities as described above.
49. The Commissioner is therefore satisfied that, as regards the RSPCA's use of wealth management companies to undertake wealth screening, the conditions for issuing a monetary penalty under section 55A DPA are satisfied.

#### **4. Data-matching and tele-matching**

50. 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.

51. The RSPCA has used the services of a number of external companies to undertake data-matching and tele-matching on its behalf since at least 2009. The Commissioner understands that, while the RSPCA does not hold records of the numbers of data subjects involved, this number is likely to exceed one million. The Commissioner further understands that the RSPCA has not ceased its data-matching and tele-matching activities.
52. The Commissioner has considered the RSPCA's fair processing notices. She considers that these notices do not indicate that personal data will be used for data-matching and tele-matching purposes.
53. Based on the findings of fact set out above, the Commissioner is satisfied that the RSPCA has contravened DPP1 – in particular, the requirement to process personal data fairly, including because it was unfair for the RSPCA to use the data for data-matching and / or tele-matching purposes without the consent of the data subjects.
54. The Commissioner is also satisfied that the RSPCA has contravened DPP2. The use of personal data for data-matching and tele-matching is incompatible with the purposes explained in the RSPCA's fair processing notices.
55. 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 RSPCA and/or marketing communications using contact details which the data subjects had declined to provide.

56. 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 RSPCA 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 RSPCA 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.
- d) The likelihood of substantial distress and/or damage arising is heightened by the fact that the additional personal data obtained by the RSPCA through its data- and tele-matching activities is likely to have been shared with other organisations via the Reciprocate scheme described above.



57. The Commissioner is satisfied that these contraventions were deliberate, in the sense that the RSPCA's actions as described above were deliberate. In other words, while the RSPCA may not have deliberately set out to contravene the DPA, it deliberately acted in such a way that it did so.
58. Alternatively, the RSPCA ought reasonably to have known that there was a risk of these contraventions occurring. The RSPCA obviously knew the terms of its own fair processing notices. It ought reasonably to have known that data subjects would be unlikely to infer from those terms that their personal data would be used for the purposes of data-matching and tele-matching.
59. Further, the RSPCA failed to take reasonable steps to prevent these contraventions from occurring. It did not amend its fair processing notices adequately in sufficient time, or cease its data-matching and tele-matching activities as described above, or obtain consent from the data subjects to the processing of data for these purposes.
60. The Commissioner is therefore satisfied that, as regards the RSPCA's data-matching and tele-matching activities, the conditions for issuing a monetary penalty under section 55A DPA are satisfied.

### **The Commissioner's decision to issue a monetary penalty**

61. For the reasons explained above, the Commissioner is satisfied that the conditions from section 55A(1) DPA have been met in this case.
62. Her reasons for reaching this view include (a) the number of contraventions for which the RSPCA 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 impacts of these kinds of contraventions, (d) the systemic deficiencies in the RSPCA'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.

63. 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 the RSPCA.
64. The Commissioner is accordingly entitled to issue a monetary penalty in this case.
65. 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. The contravention is serious in terms of both the RSPCA's deficiencies and the impact such deficiencies were likely to have on the data subjects.
66. 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.

67. For these reasons, the Commissioner has decided to issue a monetary penalty in this case.

### **The amount of the penalty**

68. The Commissioner has taken into account the following **mitigating features** of this case:

- The RSPCA co-operated with the Commissioner's investigations and self-reported the contraventions described under heading 2 above.
- The RSPCA is a charity that seeks to further its objectives in the public interest, rather than for purely private interests or mere financial gain.
- The RSPCA may have been ignorant that the practices described above contravened the DPA, i.e. it did not set out to break the law, act maliciously or cause damage or distress.
- The RSPCA is likely to take remedial action. It has an interest in ensuring that it complies with the law, retains the confidence of its donors and the public and does not suffer reputational damage.
- The RSPCA's practices may to an extent have reflected commonplace – albeit mistaken and unlawful – approaches in the charitable sector.
- The monetary penalty may also have negative reputational consequences.

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

- The RSPCA has followed the unlawful practices described above over a period of several years. Over such a time period and range of activity,

an organisation with the size and resources of RSPCA should have detected and acted upon the deficiencies in its practices. This is indicative of an organisational failure to fulfil its data protection and privacy obligations.

- The RSPCA'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 RSPCA has contravened the fundamental rights of millions of individuals to have their personal data processed in accordance with the DPA and Directive 95/46/EC. Many of those individuals are likely to have suffered more than one contravention.
- By failing adequately to explain to data subjects how their personal data would be used, the RSPCA has deprived them of control and informed decision-making about their personal data to a significant extent.
- The RSPCA'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 RSPCA and other charities. It is likely that many individuals will have been persuaded – by RSPCA and/or other charities – to increase their financial support. Those financial consequences will to a significant extent have flowed from the RSPCA's unlawful data protection practices.

70. The Commissioner has also taken into account her underlying objective in imposing a monetary penalty notice, namely to promote compliance with the DPA.

71. 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, particularly in the context of potential further penalties in the sector as a result of ongoing investigations. However, this should not be taken as an indication that the Commissioner will always reduce a penalty in such circumstances.

72. In all the circumstances, the Commissioner has decided that a penalty in the sum of **£25,000 (twenty five thousand pounds)** is reasonable and proportionate.

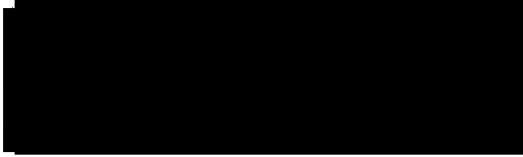
### **Conclusion**

73. The monetary penalty must be paid to the Commissioner's office by BACS transfer or cheque by **13 January 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.
74. If the Commissioner receives full payment of the monetary penalty by **12 January 2017** the Commissioner will reduce the monetary penalty by 20% to **£20,000 (twenty thousand pounds)**. However, this early payment discount is not available if the right of appeal described below is exercised.
75. 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.
76. Any notice of appeal should be received by the Tribunal within 28 days  
of the date of this monetary penalty notice.
77. Information about appeals is set out in Annex 1.
78. 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.
79. 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 5<sup>th</sup> day of December 2016

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) 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)).