DATA PROTECTION ACT 2018 AND UK GENERAL DATA PROTECTION REGULATION

REPRIMAND

TO: Ministry of Justice

OF: 102 Petty France, London, SW1H 9AJ

The Information Commissioner (the Commissioner) issues a reprimand to the Ministry of Justice (the MoJ) in accordance with Article 58(2)(b) of the UK General Data Protection Regulation in respect of certain infringements of the UK GDPR.

The reprimand

The Commissioner has decided to issue a reprimand to the MoJ in respect of the following infringement of the UK GDPR:

- Article 5(1)(f) which states that personal data shall be "processed in a manner that ensures appropriate security of the personal data including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality')."

The reasons for the Commissioner's findings are set out below.

In this case, the details of parties in an adoption process were disclosed to the birth father, despite a court judge directing that he should be excluded from the proceedings on the grounds that he posed a risk to the family concerned. The cause of the incident was the removal of the cover sheet from the front of the adoption file, which the MoJ stated was a practice that had been developed locally at ███████████████, a process that did not reflect national practice. Furthermore, the MoJ stated that the use of the cover sheet was not a written policy but was communicated by word of mouth.

Staff members with responsibility for checking the file prior to disclosure of information failed to adequately check the file contents for further information, in line with national policy, instead relying on the local practice of a cover sheet to indicate restrictions on information sharing. It was confirmed that the cover sheet was used in all local adoption cases and thus did not represent a one-off incident.

It was noted that when parties in an adoption case are to be excluded from notifications, they are usually removed from the electronic court

system. However in this case the Judge had not issued such an instruction. The MoJ also stated there was no set procedure for court communications to be recorded.

It was stated that a note regarding the restriction on information sharing had been added to the electronic filing system, ▬▬▬▬▬ but prior to the incident occurring the system could only hold one note at a time and information regarding the sharing restriction had been overwritten by subsequently added information. It was stated that the ▬▬▬▬▬ operating parameters did not provide an audit trail indicating which staff member had overwritten the note, and thus the staff member responsible could not be identified. However this is considered to be a weakness in system functionality rather than individual error on the part of the staff member inserting additional information.

It is therefore considered that the incident occurred as a result of a combination of unauthorised local process and the failure to abide by national practice requirements.

Mitigating factors

There are considered to be no mitigating factors in respect of this incident.

Remedial steps taken by the MoJ

The Commissioner has also considered and welcomes the remedial steps taken by the MoJ in the light of this incident. In particular, that ▬▬▬▬▬ ▬▬▬▬▬ has now amended its local process to bring it in line with how national practice and that the cover sheet is no longer removed when the file is placed into Celebration filing. The following of national procedure should mitigate against a repeat of this type of incident. It is noted that at the time of the incident, the electronic filing system ▬▬▬▬▬ could only hold one note at a time and the note recording the Judge's decision had been overwritten. The MoJ stated that this functionality has since been updated.

Decision to issue a reprimand

Taking into account all the circumstances of this case, including the remedial steps, the Commissioner has decided to issue a reprimand to the MoJ in relation to the infringements of article 5(1)(f) of the UK GDPR set out above.

Further Action Recommended

The Commissioner recommends that the MoJ should take certain steps to ensure its compliance with the UK GDPR. With particular reference to article 5(1)(f) of the UK GDPR, the following steps are recommended:

1. In light of this incident the MoJ should undertake a review of all court operating processes to ensure that no other local deviations from national practice are being followed. Appropriate remedial action to return any practices to national standards should be taken as necessary.

2. The MoJ should also take this opportunity to review national practice to ensure that it affords appropriate security to personal information, with any improvements identified being appropriately documented and promptly cascaded to courts. The review should ensure that procedures in relation to the withholding of addresses and confidential information are adequate for the intended purpose.

3. Spot-checks or other appropriate auditing of case files should routinely be undertaken to ensure ongoing compliance and to mitigate against a repeat of this type of incident.

4. A review of ▮▮▮▮▮▮▮ functionality should be undertaken to identify other areas of potential weakness which could compromise the security of personal information.

5. Ensure that the collective learnings from data breaches are shared across the whole MoJ estate, rather than solely in the jurisdictions within which they occur, particularly if the type of processing is common across business areas.

6. Anonymised examples of incidents should be incorporated into data protection training, particularly where training is tailored to specific business areas, with adequate explanation of how each incident occurred, to raise awareness of the potential for breaches to occur and to mitigate against future occurrences of each type of incident.

The MoJ should provide a progress update on the above recommendations within three months of the date of this reprimand, ie by 7 December 2023.