

REPRIMAND

**BONNE TERRE LIMITED
T/A SKY BETTING AND GAMING**

Reprimand issued by the Information
Commissioner concerning infringements of Article
5(1)(a), Article 6(1)(a) and Article 7(1) UK GDPR
by Bonne Terre Limited

2 September 2024

**UK GENERAL DATA PROTECTION REGULATION
(Article 58(2)(b))
CORRECTIVE POWERS OF THE INFORMATION COMMISSIONER**

REPRIMAND

2 September 2024

To: Bonne Terre Limited
Of: 4 Wellington Place, Leeds, LS1 4AP

FAO: [REDACTED]

Email: [REDACTED]

2 September 2024

PART I: INTRODUCTION AND SUMMARY

1. Bonne Terre Limited t/a Sky Betting and Gaming ("**Bonne Terre**"), is a UK establishment (with UK establishment number: BR022210) of Bonne Terre Limited¹, a foreign company incorporated in Guernsey and registered with Companies House in England and Wales with company number FC037121.

¹ Bonne Terre is wholly owned by Flutter Entertainment plc (registered with the Companies Registration Office in Ireland with company number 16956).

2. Bonne Terre provides various online betting and gaming products which offer paid-for gambling services to individual consumers. These include services provided through the domain name www.skybet.com ("**SkyBet**").
3. This Reprimand relates to the processing of personal data through the use of certain cookies which were set on the browsers of individuals ("**Visitors**") when they accessed SkyBet during the period 10 January 2023 to 3 March 2023 (the "**Processing Operations**").
4. Bonne Terre embeds third-party tracking technologies including cookies on SkyBet for the purpose of facilitating the collection of personal data. In so doing, Bonne Terre determines the purposes and means of the Processing Operations. The Information Commissioner (the "**Commissioner**") therefore finds that Bonne Terre is a "controller" as defined in sections 3(6), 5 and 6 of the Data Protection Act 2018 ("**DPA 2018**") and Article 4(7) of the UK General Data Protection Regulation ("**UK GDPR**") in relation to the Processing Operations.
5. Bonne Terre makes the following statement in its Privacy Policy², "*when you access or use our content, products, and Services, we may collect information from your devices through the use of "cookies" and similar technologies.*"
6. As a controller in relation to the personal data processed through the Processing Operations, Bonne Terre was responsible for implementing appropriate technical and organisational measures to ensure and to be

² Bonne Terre Privacy Policy, dated 24 October 2022.

able to demonstrate that the Processing Operations were performed in accordance with the UK GDPR (Article 24(1) UK GDPR).

7. The Commissioner hereby issues Bonne Terre with a Reprimand under Article 58(2)(b) UK GDPR, in the terms set out in this Reprimand. This Reprimand relates to infringements by Bonne Terre of Articles 5(1)(a), 6(1)(a) and 7(1) UK GDPR as a result of the Processing Operations.

PART II: FACTUAL BACKGROUND

8. In January 2022, Clean Up Gambling³ published a report⁴ which commented on data flows in the online gambling industry, including the data processing practices of Bonne Terre and a number of its partners. The report's findings included an allegation that Bonne Terre transferred extensive amounts of personal data to third parties without data subjects' informed consent.
9. On 26 October 2022, the Commissioner issued a letter to Bonne Terre, informing Bonne Terre that he had decided to conduct an investigation (the "**Investigation**") into whether Bonne Terre was processing personal data in compliance with the DPA 2018 and the UK GDPR. The Investigation included an assessment of Bonne Terre's compliance with its obligations under the UK GDPR and DPA 2018 in relation to its sharing of personal data with third parties for marketing purposes.
10. During the Investigation, the Commissioner identified that Visitors encountered a pop-up (the consent management platform or "**CMP**") when they first visited SkyBet which informed Visitors that, "*If you "accept All Cookies" you are agreeing to the storing of cookies on your*

³ Clean Up Gambling are a UK advocacy organisation.

⁴ Bonne Terre Privacy Policy, dated 24 October 2022.

device to enhance site navigation, assist with our marketing efforts, and analysis of product usage." The CMP provided Visitors with the option to "Accept all cookies" which was treated as consent to the collection of Visitors' personal data by third parties (the "**AdTech Vendors**") via tracking technologies including cookies. Data processed on this basis included device information and unique identifiers, which fall within the definition of personal data as set out at Article 4(1) UK GDPR.

11. The Commissioner identified that certain cookies (further referenced in paragraph 20 below) were being deployed before Visitors interacted with the CMP, with the result that Visitors' personal data was being processed and made available to AdTech Vendors through the use of cookies and without Visitors' knowledge or consent.
12. The Commissioner alerted Bonne Terre to its non-compliant practices in relation to SkyBet on 2 March 2023. By 3 March 2023, Bonne Terre had taken steps to rectify the issue. In its letter to the Information Commissioner's Office ("**ICO**") dated 17 March 2023, Bonne Terre stated: "*We confirm that the problem identified on the Skybet site on the morning of Thursday 2nd March 2023 was fixed on the morning of Friday 3rd March 2023.*"⁵ This was verified by the ICO through technical testing on 17 March 2023.
13. On 13 February 2024, the Commissioner sent a Notice of Intent to issue a Reprimand to Bonne Terre setting out the Commissioner's provisional findings that Bonne Terre had infringed Articles 5(1)(a), 6(1)(a) and 7(1) UK GDPR. Bonne Terre submitted written representations (the "**Representations**") to the Commissioner in response to the Notice of

⁵ Bonne Terre's letter to the ICO dated 17 March 2023, p. 6, section 1.1.2

Intent on 10 April 2024. This Reprimand takes into account Bonne Terre's Representations and, where appropriate, makes specific reference to them.

14. Having carefully considered the Representations, the Commissioner finds that Bonne Terre has infringed Articles 5(1)(a), 6(1)(a) and 7(1) UK GDPR.
15. In summary, the processing of personal data taking place pursuant to the Processing Operations was carried out unlawfully from 10 January 2023 to 3 March 2023. Despite the Processing Operations purportedly being carried out in reliance on consent for the purposes of Articles 5(1)(a) and 6(1)(a) UK GDPR, the collection of personal data for marketing purposes, via third-party tracking technologies, commenced before Visitors had given their consent to the processing of their personal data for those purposes in a way which satisfied the requirements of Article 7(1) UK GDPR, read in conjunction with Article 4(11) UK GDPR. The reasons for the Commissioner's findings are set out below.
16. To the extent that they are relevant to this notice, the Commissioner's functions are set out under Article 58(2)(b) of the UK GDPR.

PART III: THE INFRINGEMENTS

17. The Commissioner has found that Bonne Terre infringed Articles 5(1)(a), 6(1)(a) and 7(1) UK GDPR in respect of the Processing Operations (the "**Infringements**").
18. The Commissioner has found that personal data was being processed by certain third-party tracking technologies which were deployed on

Visitors' browsers, when they accessed SkyBet before they interacted with the CMP.⁶ This occurred from 10 January 2023 to 3 March 2023.

19. Bonne Terre confirmed to the Commissioner that all processing of personal data by marketing cookies was on the basis of the Visitors' consent,⁷ meaning that Bonne Terre and the AdTech Vendors were relying on the Article 6(1)(a) UK GDPR lawful basis of consent for the processing of Visitors' personal data for the marketing purposes set out in the CMP.⁸
20. However, in the course of the Investigation, the Commissioner identified that certain third-party marketing cookies were being deployed before Visitors had provided their consent, resulting in the processing of individuals' personal data without consent or any other valid lawful basis. MediaMath, a demand side platform⁹ contracted by Bonne Terre, used a pixel embedded within SkyBet to facilitate the setting of approximately 40 third-party marketing cookies, which were placed on Visitors' devices before the Visitors set their preferences within the CMP (i.e. before consent could have been obtained).
21. As a result of the above practices, Visitors' personal data was made available to and processed by AdTech Vendors without Visitors' valid

⁶ Response from Bonne Terre dated 17 March 2023 (responding to ICO's Letter 6 March 2023), Section 1.1

⁷ Response from Bonne Terre dated 17 March 2023 (responding to ICO's Letter 6 March 2023), Section 1.2.2.

⁸ The CMP at the time of the breach stated, under "*Third Party Marketing / Targeting Cookies*" that: "*These cookies are used to deliver Flutter Entertainment plc group advertisements relevant to you, based upon your interests. They are also used to limit the number of times you see an advertisement as well as help measure the effectiveness of an advertising campaign.*"

⁹ A demand side platform (DSP) buys inventory (space on websites) based on behavioural, and often personal data. If the impression matches the advertiser's target audience then a bid is placed via the DSP.

consent, in breach of the requirement for the processing of personal data to be lawful and fair under Articles 5(1)(a), 6(1)(a) and 7(1) UK GDPR.

PART IV: DECISION TO ISSUE THIS REPRIMAND

22. In deciding to issue this Reprimand, the Commissioner has considered the potential harms caused by the contraventions.
23. The Infringements were the collection, via the MediaMath pixel, and disclosure of personal data relating to Visitors for marketing purposes without valid consent or any other lawful basis, as set out in paragraph 20 above. Bonne Terre confirmed that it was relying on consent as its lawful basis for processing personal data by the cookies deployed in accordance with Article 6(1)(a) UK GDPR. The Commissioner concludes that this processing occurred without valid consent in accordance with Article 6(1)(a) UK GDPR or any other lawful basis, for the period from 10 January 2023 to 3 March 2023, in contravention of Articles 5(1)(a), 6(1)(a) and 7(1) UK GDPR.
24. The Commissioner has had regard to the Representations which outline the restrictions which Bonne Terre is subject to as a result of its operating licence, issued pursuant to the Gambling Act 2005.
25. In particular, in assessing the seriousness of the Infringements, the Commissioner notes the following measures adopted by Bonne Terre as described in the Representations:
 - 25.1 When an individual registers as an online account holder through one of Bonne Terre's online product or service domains (a "**Customer**"), Bonne Terre is required to ensure that the Customer meets the general requirements applicable to gambling account

holders in the UK, namely, that the Customer is old enough to gamble and has not self-excluded¹⁰ from gambling. If Bonne Terre identifies that an individual is trying to re-register while self-excluded or registered with GAMSTOP (a gambling self-exclusion scheme), the request to open an account will be refused.

25.2 Bonne Terre undertakes profiling to assess whether a Customer or an individual seeking to register as a Customer should be removed from targeted marketing based both on explicit Customer preference and other marketing suppression flags, such as whether a Customer has failed the verification process or whether a Customer is at or near their spend limit and has a zero balance. Bonne Terre explained that there are over 30 suppression flags which are considered when building marketing audiences, including when Customers have: reached their deposit limit; been identified as a high risk by the CRISP (Customer Risk Propensity) Model¹¹; an active or previous GAMSTOP¹² registration; or an active self-exclusion agreement with Bonne Terre.

26. The Commissioner notes the safeguards outlined in Paragraph 25 above in limiting access to gambling services offered via SkyBet and reducing the volume of targeted marketing being served to Customers who have triggered the relevant suppression. The Commissioner acknowledges the likely impact of these restrictions and safeguards in reducing the

¹⁰ Self-exclusion is a formal agreement entered into by a gambling customer with either a single gambling operator or multi-operators to not gamble. Reasonable steps must be taken by the relevant gambling operators to prevent the customer from gambling.

¹¹ CRISP is a propensity model designed by Bonne Terre to identify customers at risk of gambling-related harm. The model uses historical self-exclusion and GAMSTOP data alongside approximately 80 short-term and long-term features to output a probability that they will self-exclude. Phase 2 Response from Bonne Terre dated 13 January 2023, Section 21.2.5

¹² Registering for GAMSTOP will block a prospective customer from online logging into or setting up gambling accounts with businesses licensed in Great Britain if a UK resident.

seriousness of the Infringements but notes that the controls only apply to Customers. .

- 27 Bonne Terre further asserts in the Representations that its relationship with MediaMath was governed by a Master Service Agreement which provided for contractual controls that limited MediaMath's use of data collected via SkyBet, resulting in MediaMath only being allowed to use the data for limited commercial purposes. In addition, Bonne Terre submits that the Infringements did not result in any disclosure to MediaMath of the fact that data subjects had interacted with a gambling website and that this significantly limited any potential harm arising from the Infringements. The Commissioner notes these Representations and has taken the contractual controls and limits on sharing with MediaMath into account in assessing the seriousness of the Infringements.
28. Unlawful disclosure of personal data to third parties is a matter of significant public concern, particularly where it occurs in a commercial context. The ICO Public Awareness Survey¹³ published in September 2022 found that 56% of those surveyed were "very concerned" about organisations/companies using their personal data without their permission, and 91% of those surveyed were concerned about this to some extent. Broader research has similarly found that a significant majority of data subjects are concerned about their inability to effectively control the use of their personal data, particularly the sharing of personal data between parties for commercial purposes.¹⁴

¹³ [ICO Public Awareness Survey](#)

¹⁴ [Digital Footprints - Communications Consumer Panel; Charter of Fundamental Rights and General Data Protection Regulation - May 2019 - Eurobarometer survey \(europa.eu\); Control, Alt or Delete? Consumer research on attitudes to data collection and use \(which.co.uk\); Are you following me? \(which.co.uk\); Are You Still Following Me? - Which? Policy and insight. A](#)

29. These concerns are highly relevant in the context of advertising technology, where personal data is collected, combined, and used for commercial purposes, often in potentially opaque ways.
30. The ICO has previously identified¹⁵ various potential harms arising from tracking technologies deployed for marketing purposes, including both harm suffered by individuals and societal harms with collective consequences.
31. For the purposes of this Reprimand, the Commissioner has also considered the potential harms arising from the Infringements, which include loss of autonomy and potentially a sense of manipulation or influence, since data subjects were deprived of the opportunity to confirm that they did not consent to the collection and disclosure of their personal data; loss of control of their personal data, where expectations of effective choice may not have been met in instances where personal data was collected prior to Visitors giving or refusing consent; and intrusion into data subjects' lives, including a possible sense of surveillance by way of unwanted targeted advertising where cookies were deployed on the browsers of Visitors who chose to reject third-party tracking.¹⁶
32. The ICO has specifically addressed the need for effective choice in the advertising technology context in its previous publications and other communications. For example, the ICO's 2019 Update Report into Adtech and Real Time Bidding¹⁷ stated that "*[c]ookies used for the purposes of online advertising... require prior consent*". Despite Bonne Terre's

2016 survey by the European Commission found that 96% of UK consumers thought that it was important that their personal information on their computer, tablet or smartphone could only be accessed with their permission

¹⁵ [Opinion on data protection and privacy expectations for online advertising proposals](#), p.18

¹⁶ [Overview of Data Protection Harms and the ICO Taxonomy](#) p. 24.

¹⁷ [Update Report into AdTech and Real Time Bidding \(ico.org.uk\)](#), p. 18.

statement that it had adopted that position,¹⁸ it failed in practice to implement it in the circumstances identified in paragraph 20 above for the period from 10 January 2023 to 3 March 2023.

33. Finally, the Commissioner has had regard to the fact that the Processing Operations took place in the context of visits made to gambling websites. Research has indicated that vulnerable¹⁹ data subjects are concerned about gambling addictions being manipulated in the targeted advertising context.²⁰
34. The Commissioner has issued this Reprimand in respect of the Infringements on the basis that, in all the circumstances, and having regard to the matters listed in the Commissioner's Regulatory Action Policy²¹, a Reprimand is an effective, proportionate and dissuasive measure.

PART V: FURTHER ACTION RECOMMENDED

35. The Commissioner recommends that in order to ensure Bonne Terre's future compliance with Articles 5(1)(a), 6(1) and 7(1) UK GDPR and to maintain best practice, Bonne Terre should continue to review and monitor its processes to ensure that all non-essential cookies and tags

¹⁸ Response from Bonne Terre dated 17 March 2023 (responding to ICO's Letter 6 March 2023), Section 1.2.2, confirming that all marketing cookies were deployed on the basis of the Visitors' consent.

¹⁹ For the purposes of this research, Which? defined vulnerable consumers as people aged 80 years and over; people belonging to a lower socio-economic group (DE); people with a long-term physical or mental health condition/disability; and people who do not feel confident speaking, reading or writing in English.

²⁰ [Control, Alt or Delete? Consumer research on attitudes to data collection and use \(which.co.uk\)](https://www.which.co.uk); see also [Online targeting: Final report and recommendations - GOV.UK \(www.gov.uk\)](https://www.gov.uk), showing that 77% of those surveyed considered the use of personal data by a gambling company to find people most interested in placing a bet to be unacceptable.

²¹ [Regulatory Action Policy \(ico.org.uk\)](https://www.ico.org.uk)

are deployed on Bonne Terre's domains only after valid Visitor consent has been obtained.

36. If, in future, the Commissioner has grounds to suspect that Bonne Terre is not complying with its obligations under the UK GDPR and/or DPA 2018, and there has been repetition of the Infringements set out in this Reprimand (which could be avoided by following the Commissioner's recommendations or taking alternative appropriate steps), this may be taken into account as an aggravating factor, in accordance with the ICO Regulatory Action Policy and Article 83(2)(i) UK GDPR, in deciding whether to take further formal regulatory action.

Dated the 2nd day of September 2024



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