Munich RE

8 May 2017

The Data Protection Team
Department for Culture, Media & Sport

Dear Sir

Call for views on the GDPR

This response to your call for views on the General Data Protection Regulation Derogations 12th April 2017 is on behalf of Munich Re Company United Kingdom Life Branch. We are the UK branch for life reinsurance business of the Munich Re Group. Munich Re is one of the largest worldwide reinsurance companies.

We would like to respond as follows:

Theme – 7 Sensitive Personal Data and Exceptions.

The insurance and reinsurance industry in the UK is both of considerable economic importance and a large processor of Personal and Sensitive Personal Data. The processing of Personal and Sensitive Personal Data by the insurance industry is essential to support insurance contracts. In particular, life, health, income protection, private medical insurance and critical illness products.

At present, in order to lawfully process Sensitive Personal Data under the 1998 Data Protection Act we rely on the Schedule 3 condition of: "The data subject giving his explicit consent to the processing of the personal data". In addition, in order to properly assess the risk involved in life and health insurance contracts we have also relied on the circumstances in which Sensitive Personal Data may be processed contained in Statutory Instrument 2000 no 417, The Data Protection (Processing of Sensitive Personal Data) Order 2000. In particular those contained in paragraphs 5 and 6.

In order to allow the insurance industry to continue to process Sensitive Personal Data for insurance, we would urge the following two derogations under Article 9 (4) of the GDPR.

1. **The circumstances allowed for in Statutory Instrument 2000 no 417 be included in their entirety.**

When assessing the risk of mortality and morbidity of an insured life under the application for life and health insurance contracts, it is important to be able to ask questions and process data concerning the medical history of close family members which is an important factor in the risk assessment (underwriting) of the data subject applying for insurance.

At present, within Article 9 of the GDPR there is no condition that an insurance company can use such data except under 2 (a) the data subject has given explicit consent. It is not practical to expect the data controller to obtain the explicit consent from close family members where any processing that takes place has no impact on them as data subjects. Therefore we would urge that the present legislation within the existing Statutory Instrument 2000 no 417 is transferred to the GDPR to allow the insurance industry to continue to collect and process family history data as at present.

2. **The processing is necessary for the performance of an insurance contract or in order to take steps at the request of the data subject prior to entering into an insurance contract.**

As indicated earlier, at present Article 9 of the GDPR has no condition that an insurance company can use to process Sensitive Personal Data other than 2 (a) the data subject has given explicit consent.

However we suggest that relying on explicit consent from the data subject is problematic, since the conditions for consent in Article 7 (4) may be interpreted as such consent has not been given freely if it is necessary for the conclusion of a contract or for services. This is supported by Recital 42, where consent should not be realised as freely given if the data subject has no genuine free choice or is unable to refuse consent without detriment.

This has been further reinforced in the latest GDPR Consent Guidance issued by the Information Commissioner 31st March 2017 where the Information Commissioner recommends avoiding using consent for the provision of service and that 'consent' as a precondition of offering a service is unlikely to be the most appropriate lawful basis

In order for a data subject to enter in to an insurance contract concerning mortality, morbidity or health insurance, it will be necessary for sensitive personal data to be obtained and processed as part of the risk assessment (underwriting) processes as a precondition to the acceptance of any contract. Similar, in the processes of evaluating claims where a medical assessment needs to take place to validate the condition of claim it is necessary for Sensitive Personal Data to be processed. If consent for this is not given or is withdrawn by the data subject, this would result in the insurance contract to be terminated or a claim to be declined.

We suggest that it is more obvious to any data subjects who intend to take out mortality, morbidity or health insurance, that they are entering into a contract where it is necessary to process sensitive personal data and

therefore the processing of such Sensitive Personal Data should be allowed to support the insurance contract.

Insurance business in this respect could be defined as it is in Statutory Instrument 2000 no 417 paragraph 5.

The transparency for the processing for the data subjects would still be in place as the processing would still be subject to the safeguards already contained within Articles 5 and 6 of the GDPR.

Therefore in summary we would urge derogations under Article 9 (4) to include the following two points:

- The legislation within the existing Statutory Instrument 2000 no 417 be transferred to the GDPR.

- A new condition "the processing is necessary for the performance of an insurance contract or in order to take steps at the request of the data subject prior to entering into an insurance contract" is included.

If you have any questions to the above, please feel free to contact me. I would be happy to discuss this further with you.

With kind regards,

Yours faithfully