Department for Culture Media and Sport
Call for views on the General Data Protection Regulation derogations

Response of behalf of BGL Group Limited – 10 May 2017

In response to the Department for Culture Media and Sport's call for views on the General Data Protection Regulation derogations issued on 12 April 2017, BGL Group Limited (BGL) would like to submit the feedback below.

By way of background, BGL is a financial services group which includes one of the UK's most popular price comparison websites, ComparetheMarket.com (which provides a range of comparison services for products such as insurance, energy, credit cards etc), as well as an insurance intermediary division which arranges and administers policies of insurance both online and by telephone under numerous brands. In the context of providing these services to consumers, it is necessary for personal data (including sensitive personal data) to be processed for purposes such as the consideration of applications for insurance, market research and fraud prevention activities.

Theme 5 – Archiving and Research

To assist in providing the right service to our customers and ensuring that we can make accurate decisions on issues such as pricing and credit worthiness assessments it is necessary to us to use personal data for statistical and research purposes. This can include the consideration of claims information to predict the likelihood of claims being made in the future, predicting the likelihood of a customer to fall into debt and can also importantly include activity such as examining past policies to look for patterns which may assist us in predicting fraud in the future. It is important that the accuracy of this research can be maintained and therefore we believe it is necessary for the existing exemptions under the Data Protection Act to continue to ensure that the processing of data for statistical and analytic purposes is not unnecessarily restricted.

Theme 7 – Sensitive Personal Data and exceptions

Both as an insurance intermediary and in providing price comparison services for insurance products, BGL is required to regularly process sensitive personal data for the purposes of providing insurance quotes and administering insurance policies for customers. For example, we provide quotes and administer policies for life insurance and critical illness cover which requires us to collect detailed medical information from customers. We also need to collect sensitive personal data in relation to other services such as details of vehicle modifications due to a disability when the customer is requesting a car insurance quote or a customer's medical history when the customer is requesting a travel insurance quote. This sensitive personal data is necessary in order for us to provide services that the customer has requested. We also need to retain and process this sensitive personal data or share it with our panel of underwriters for the purpose of dealing with claims that may arise under the policies and for the purposes of fraud prevention and assessing policy risk/premiums.

Under the GDPR the only applicable processing condition in Article 9 is explicit consent. We have concerns, in light of the ICO's recent guidance on consent, that if a customer withdraws consent, this will prevent us from being able to continue to process sensitive personal data for the required purposes. If a customer withdraws his or her consent but does not want us to cease providing policy cover or if an insurance policy has already been provided, this presents us with a challenge as we cannot continue to administer the policy without processing sensitive personal data. These concerns will be relevant not just to BGL, but to all other businesses operating in the insurance industry.

We therefore seek clarity on the following derogations:

- Article 9(2)(a) – explicit consent: Our view is that this derogation should be clear that if consent is later withdrawn, but the processing of the relevant data remains necessary to provide services that the data subject continues to request, the derogation can continue to be relied on. In the alternative, additional secondary legislation would be required in the UK to permit this on-going processing, which we submit could be implemented pursuant to Article 9(2)(g) on the basis that it is in the substantial public interest to enable sensitive personal data to be processed to enable provision of insurance cover.

- Article 9(2)(f) – establishment, exercise or defence of legal claims: We consider that UK law should make it clear that this derogation applies to the retention of sensitive personal data for the purposes of future claims regardless of whether or not a specific claim is at issue. Insurance providers should be allowed to retain all data relating to a policy for an appropriate period after the end of the policy so that they can deal with any claims that may be raised in relation to that policy. If data could only be retained if a specific claim was known about, this would significantly inhibit insurers' ability to defend themselves against future legal claims which might not be apparent immediately at the end of the relevant policy.

- Article 9(2)(g) – substantial public interest on the basis of Member State law. Insurance providers and intermediaries are also required to retain sensitive personal data obtained as part of providing a quote and/or administering a policy for the purposes of fraud prevention and detection. For example, in the context of providing life insurance cover, we need to retain sensitive personal data about health conditions provided during the quote process in order to detect potentially fraudulent requests for quotes if a customer later requests a quote without disclosing a certain condition. We consider that the Data Protection (Processing of Sensitive Personal Data) Order 2000 should be retained/adapted to enable the processing of sensitive personal data for fraud prevention purposes in the insurance industry and other markets where such processing is necessary to combat fraud. It is certainly in the substantial public interest for this type of processing to be allowed for fraud prevention purposes as this allows insurance premiums to be kept at an acceptable level for all customers. UK law should make it very clear that fraud prevention and detection is in the substantial public interest to enable this derogation, as well as other derogations relating to processing in the public interest, to be applied appropriately in relation to these activities.

Theme 8 Criminal Convictions

Many businesses across the insurance industry, including BGL, rely heavily on processing personal data relating to criminal convictions or offences (in compliance with all legal requirements) to detect fraud, verify claims and to assess risk in order to ensure that insurance premiums are set at an appropriate level. It is therefore of vital importance to us and to the insurance industry as a whole for there to be appropriate derogations which allow insurance providers, intermediaries, underwriters, price comparison sites etc. to process this type of data for these purposes. We therefore consider that the following derogations would (as a very minimum) be appropriate:

- Retention of the Data Protection (Processing of Sensitive Personal Data) Order 2000 to allow processing of criminal conviction data for fraud prevention and detection purposes.

- Implementation of a new statutory exemption to allow processing of criminal conviction data by insurance providers, insurance intermediaries, underwriters and other businesses within the

insurance industry for the purposes of assessing and underwriting risk, setting premiums and verifying claims in relation to insurance policies.

- We also consider that derogations should be introduced to allow for criminal conviction data to be treated in as similar a manner as possible to sensitive personal data under the Data Protection Act and the GDPR. For example, including a derogation for explicit consent and for where processing of criminal conviction data is necessary for the purposes of legal claims. The additional derogations referred to above may not be appropriate to cover all cases where organisations (including within the insurance sector) need to process criminal conviction data and it will not be possible to legislate for all specific situations that might be relevant. Our view is that it will be important to introduce derogations similar to the current conditions for processing sensitive personal data to ensure that data controllers do not fall foul of the GDPR where they have a genuine, legitimate need to process criminal conviction data and/or where the data subject has confirmed that he/she is happy for such data to be processed (provided that the conditions for explicit consent are met).

Theme 13 – Restrictions

We believe that the existing exemptions in relation to data subject rights in the Data Protection Act are appropriate and represent a sensible balance between the rights of the data subject and ensuring the data controller's position or the wider public interest is not prejudiced. By way of example, it is sometimes appropriate for data to be withheld from a subject access request as it will prejudice the data controller's positon in a negotiation or legal claim or it may be appropriate for information to be withheld where disclosing the information to the data subject would tip them off in relation to an ongoing fraud investigation. We therefore consider that it is important that appropriate exemptions remain in relation to subject access request, particularly in the areas of management forecasting and planning, negotiations with the data subject, legal professional privilege, crime and taxation and legal proceedings.