Cunningham Lindsey

DRAFT

Data Protection Team
Department for Culture, Media & Sport

25 April 2017 Our Ref : PL

Dear Sirs

Call for views on derogations under GDPR

We are writing to you in response to your call for views on derogations under the GDPR.

Our principal business activity is handling claims for insurers under policies issued to their customers (policyholders). Insurers generally appoint us to establish the extent of liability for a particular claim by making enquiries and reporting back to them, recommending payments where appropriate. We are one of the largest providers, dealing with in excess of a quarter of a million claims a year.

To continue the work we do (and for claim handling in the insurance market generally), we believe the GDPR requires at least the derogations outlined below which we set out under the respective themes in your "Calling" paper.

Theme 8 (Article 10) – Criminal Convictions and Offences

A common requirement for insurance is that a policyholder discloses any current criminal convictions. If a current conviction is not disclosed to insurers when the policy is taken out, or renewed, the contract may be void. We (and the rest of the insurance market) therefore have to process details of criminal convictions. Presently, Article 10 prevents us from doing so and some form of derogation is needed allowing the insurance market to process this data.

Theme 9 (Article 17) – Right to be Forgotten

Once a claim has been concluded, we continue to hold the associated records for audit, quality control, recovery/identification of stolen/missing property, further loss/damage coming to light, recoveries against third parties, litigation, review by a regulatory body or to meet insurer's contractual requirements.

Under the GDPR, Article 17 says that data has to be erased if "No longer necessary in relation to the purposes for which they were collected or otherwise processed."

Under the GDPR a claimant will expect their data to be deleted as soon as their claim has been determined. However, we believe that derogations may be needed for us and the insurance market generally to retain data beyond this point for all the reason listed above.

Theme 13 (Article 23) – Subject Access Requests (Article 15)

There are two issues under this heading as follows:

1) Disclosure Exemptions

The new GDPR does not appear to have the usual DPA exemptions allowing us to withhold certain data needed to protect insurer's position when responding to a SAR. In particular we currently rely on the following DPA exemptions:

> Sect. 29.1(a) - personal data processed for prevention or detection of crime
> Sect. 37 (Schedule 7 Sect. 7) - personal data likely to prejudice negotiations
> Sect. 37 (Schedule 7 Sect. 10) - personal data to which legal professional privilege could be maintained in legal proceedings

Not being able to withhold this data when needed, will prevent us from dealing with claims properly, as the claimant (data subject) will be able to access any ongoing issues still under consideration, investigation or negotiation. It is not clear to us how we can prevent this under the GDPR and derogations corresponding to the above DPA exemptions will be needed.

2) Subject Access Request (Fee)

For our organisation and we believe many others, the biggest cost under the GDPR will be servicing subject access requests. With a single claim, there can be several thousand pages of correspondence, documents, specifications, photographs etc from the various parties involved, both internally and externally. These records are often held on different files and systems and in multiple formats.

To deal with a subject access request, all the records have to be gathered together and reviewed by different parties to determine what can be released without prejudicing insurer's position. Additional work is required where telephone calls are recorded, as these all have to be traced on different systems, offloaded and reviewed. The time and cost involved can be many thousands of pounds which can increase even further if the data subject has made several claims and wants data covering them all.

In our business, we have experienced a gradual increase in the number of SARs received over the years. Presently the £10 fee under the DPA is just sufficient to make people think twice about making a subject access request. Without it, anyone with the slightest dissatisfaction, complaint or even just mild curiosity can demand their data often resulting in us incurring thousands of pounds in costs.

It is difficult to predict the impact that removing the fee will have but we believe it will “Open the floodgates” to the number of SARs submitted and there will be a corresponding increase in the cost to our organisation and insurers.

We are therefore seeking some form of derogation covering at least the administrative cost of servicing an SAR where it involves reviewing substantial records, say more than 500 pages of documentation or some other equivalent metric. We believe this is important to reduce the huge cost of servicing subject access requests for all organisations.

Cost Impact (Mitigation)

Overall, we believe that the GDPR will add substantial cost to most organisations in a way that has not been fully taken into account. This is supported by the report prepared by London Economics Consultants (LEC) for the Information Commissioners Office looking into the implications of the GDPR. The LEC paper (May 2013) revealed that the Office European Commission estimated a net benefit of £2 billion arising from the reduced administrative burden of complying with a unified EU law. However, in summing up their findings the LEC said:

> “We find that considerable uncertainty surrounds these cost estimates. This is based on very strong evidence from a unique new survey of individuals with data protection responsibilities in UK companies. In particular, the survey demonstrates widespread and pervasive uncertainty about actual data protection costs, as well as the content and implications of the proposed reforms to the European data protection framework.”

However, the GDPR is now in place and there appear to be limited options for reducing costs for our business sector beyond those outlined above.

Yours faithfully

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