

DATA PROTECTION ACT 2018 AND UK GENERAL DATA PROTECTION REGULATION

REPRIMAND

The Information Commissioner (the Commissioner) issues a reprimand to South Tees Hospitals NHS Foundation Trust (the Trust) in accordance with Article 58(2)(b) of the UK General Data Protection Regulation in respect of certain infringements of the UK GDPR.

The proposed reprimand

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

- Article 5 (1)(f) of the UK GDPR which states, "appropriate technical and organisational measures to be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data."
- Article 5 (1)(d) of the UK GDPR which states, "accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay."

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

Representations made by the Trust have been acknowledged and have been considered prior to the issuing of this reprimand.

The incident occurred [REDACTED] when a Trust administrator sent a standard letter to inform the father of a child patient of an appointment made for the child to attend hospital for a medical examination. The appointment letter was sent to the wrong address.

The letter was sent to the address of family of the child's mother, [REDACTED] [REDACTED] Though only basic details were included in the letter, a leaflet with advice [REDACTED] was included in the envelope with the letter. This [REDACTED] [REDACTED] caused significant distress to the father, child and to the family.

From the information seen during the investigation, the Trust has not provided evidence of a formal documented process or procedure, in use at the time of the incident, to ensure that regular updates of patient details

were made on the e-Camis system using the NHS Spine to ensure the accuracy of the data held by the Trust. It was a concern that only if a patient had recently attended for an appointment would the Trust's e-Camis system have been updated.

Therefore, there was an inherent risk that the e-Camis system did not reflect accurate patient information available to the Trust via the NHS Spine. This risk should have been considered by the Trust and a clear written procedure put in place to ensure steps were in place to mitigate this risk and ensure the correct contact details were used.

Evidence has also shown that there was no process to inform staff of checks that may be necessary when using information from referral letters or the NHS Spine, particularly when sending correspondence that may be more sensitive than usual. If such a process had been provided for staff, it would have gone some way to mitigate the risk of e-Camis not being accurate.

From information provided during the investigation, the emphasis of the Trust was always on the Trust's three-point check that is in place for checking personal details against e-Camis. This may be sufficient when handling general correspondence. However, by the Trust's own admission, that check would not have ensured that this breach would not have occurred.

It was a concern that nothing was seen that pointed to staff being made fully aware of all checks that should be made in all situations when dealing with particularly sensitive information.

An amended Information Governance Protocol (the protocol) has been provided by the Trust. This includes some guidance for staff going forward. This accompanied by further training and formal guidance may help ensure that incidents of this nature would be less likely to occur in future. However, there has been no evidence seen that any similar measures were in place at the time of the incident.

Therefore, although the Trust has said that this incident was caused by human error, there has been no evidence seen that the Trust fully and appropriately prepared staff for their role in dealing with correspondence that was particularly sensitive. More effective preparation would have mitigated against the possibility of human error.

The result of the breach lead to significant distress being caused to the child and their family. [REDACTED]



Mitigating factors

Although appropriate measures were not in place to ensure that staff were aware of all the checks that should be taken, it is noted that the Trust's overarching data protection training for staff was sufficient and conformed to a national standard for the NHS. The Trust has stated that it would provide refresher training for staff following the incident.

It was also noted that the Trust provided more than one apology to the father of the child in the immediate aftermath of the incident which may have helped in convincing the father to allow the child to continue with the medical examination.

Remedial steps taken by South Tees Hospitals NHS Foundation Trust

The Commissioner has considered and welcomes the remedial steps taken by the Trust in the light of this incident. In particular, the decision by the Trust to implement a new Standard Operating Procedure (SOP) for the checking and updating personal information held on systems not linked to the Spine.

Decision to issue a reprimand

In conclusion, the Trust failed to ensure that the personal data it held for the child patient in this case was accurate. It also failed to ensure the integrity and confidentiality of the personal data it held for the child. Therefore, the Trust infringed both Article 5 (1)(d) and Article 5 (1)(f) of the UK GDPR.

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

Further Action Recommended

The Commissioner recommends that the Trust should take certain steps to ensure its compliance with UK GDPR.

1. In order to ensure the Trust's compliance with Article 5 (1)(d) and Article 5 (1)(f), the Trust should ensure that the new SOP, including the additional checks are implemented as soon as possible.

2. The Trust should also ensure that other remedial measures stated in its response to the Commissioner's enquiries are fully implemented as soon as possible. Including, administration and secretarial staff repeating Data Security and Protection training, [REDACTED]
[REDACTED].
3. In order to ensure compliance with Article 5 (1)(f), the Trust should ensure that all staff who may deal with correspondence, are trained in a process to ensure that full and proper checks of patient details are made against the NHS Spine to prevent reoccurrence of further incidents.
4. In order to ensure compliance with Article 5 (1)(d), the Trust should ensure that the e-Camis system is regularly updated and checked against the NHS Spine to reflect accurate patient information.