

DATA PROTECTION ACT 2018 AND UK GENERAL DATA PROTECTION REGULATION

REPRIMAND

TO: University Hospital of Southampton NHS Foundation Trust,

OF: Tremona Road, Southampton, SO16 6YD

1.1 The Information Commissioner (the Commissioner) issues a reprimand to University Hospital of Southampton NHS Foundation Trust (hereafter UHS) in accordance with Article 58(2)(b) of the UK General Data Protection Regulation (UK GDPR) in respect of certain infringements of the UK GDPR.

The reprimand

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

- **Article 12 (3)** which states 'The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay. Where the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject.'
- **Article 15 (1)** which states 'that the data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data.'
- **Article 15 (3)** which states 'The controller shall provide a copy of the personal data undergoing processing.'

1.3 Based on the findings of this investigation, the ICO deems that UHS responded to 59% of incoming Subject Access Requests (hereafter SARs) during the period of 01 August 2022 to 01 July 2023 within the statutory timeframe. UHS continues to have a backlog of SAR cases (621 as of 30/01/2024) and, based on recent figures provided, this does not appear

to be improving. The data subjects are a mixture of service users and employees.

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

1.5 UHS NHS Foundation Trust is one of the largest University Hospitals, providing inpatient services to a population of 1.9 million people who live in Southampton and South Hampshire. UHS is also responsible for providing specialist services to over 3.7 million people living in Southern England and the Channel Islands. The trust operates five hospitals and one birth centre. Due to the nature of the organisation, there are several categories of data processed including personal identifiers and special category data, including health.

1.6 During the investigation, UHS attended a virtual compliance meeting with the ICO and outlined the processes and procedures followed to complete SARs. These were inadequate and not in line with current legislation. For example, until January 2021, staff dealt with SARs in alphabetical order, meaning several data subjects were left waiting for an extensive period of time for their request to be completed. It should be noted that although this has contributed to the increased backlog, this has been rectified and SARs are now processed in date order.

1.7 UHS provided policies and procedures through the course of the investigation in relation to data protection and SARs. The Access to Records policy was significantly outdated, relating to previous legislation of Data Protection Act 1998.

Article 15 (1) and Article 15 (3)

1.8. During the period investigated, were failing to respond to 41% of SARs within the statutory timeframe of one (or three calendar months for complex SARs). UHS failed to demonstrate that they have provided data subjects the right to obtain confirmation as to whether UHS are processing their personal data and if so, giving the data subjects access to this information within the statutory timeframe.

Article 12 (3)

1.9. UHS failed to inform data subjects of the progress of their request, other than the acknowledgement email sent when the request is received. As a result, this led to complaints from data subjects to UHS directly and to the ICO. It should be noted that due to the volume of requests UHS

received monthly, UHS were automatically applying extensions to all requests, instead of only complex cases, without informing data subjects. This is a failing of Article 12(3) which requires controllers to inform the data subject of any such extension along with the reasons for the delay. ICO would expect UHS to regularly make contact with data subjects informing them of the progression of their case.

1.10. UHS state priority cases and those with a deadline provided by a third-party requestor are dealt with as soon as received and completed within the statutory time frame.

Remedial steps taken by UHS.

1.11. The Commissioner has also considered and welcomes the remedial steps taken by UHS in the light of this incident. In particular UHS actively notified the ICO of their backlog in April 2023 and have cooperated fully through the course of the investigation.

1.12. UHS attended a compliance meeting with the ICO and were open and honest throughout the discussions. As a result of the compliance meeting, UHS implemented some remedial measures, such as devising a letter / email to inform data subjects of the progress of their request, this was implemented by 7 November 2023.

1.13. During the investigation, UHS stated requests can take a while to progress and complete due to the number of different systems and paper records held by UHS. UHS are intending to implement a new system which should relieve time and allow better oversight, management and location of records in order to complete SARs promptly.

Decision

1.14. Taking into account all the circumstances of this case, including the remedial measures implemented from October 2023 onwards, the Commissioner has decided to issue a reprimand to UHS in relation to the alleged infringements of Article 12 (3), Article 15 (1) and Article 15 (3) of the UK GDPR set out above.

Further Action Recommended

1.15. The Commissioner has set out below certain recommendations which may assist UHS in rectifying the infringements outlined in this reprimand and ensuring UHS future compliance with the UK GDPR. Please note that these recommendations do not form part of the reprimand and

are not legally binding directions. As such, any decision by UHS to follow these recommendations is voluntary and a commercial decision for UHS. For the avoidance of doubt, UHS is of course required to comply with its obligations under the law.

1.16 If in the future the ICO has grounds to suspect that UHS is not complying with data protection law, any failure by UHS to rectify the infringements set out in this reprimand (which could be done by following the Commissioner's recommendations or taking alternative appropriate steps) may be taken into account as an aggravating factor in deciding whether to take enforcement action - see page 11 of the Regulatory Action Policy [Regulatory Action Policy \(ico.org.uk\)](https://ico.org.uk/for-organisations/regulatory-action-policy) and Article 83(2)(i) of the UK GDPR.

1.17. The Commissioner recommends that UHS should consider taking certain steps to improve its compliance with UK GDPR. With particular reference to Article 12 (3), Article 15 (1) and Article 15 (3) of the UK GDPR, the following steps are recommended:

1. UHS should action the remaining outstanding SARs in the backlog.
2. UHS should take all reasonable steps to ensure SARs are responded to within the statutory deadlines, in line with Articles 12(3), 15(1) and 15(3) of the UK GDPR.
3. UHS should ensure that staff are adequately trained to process and respond to SARs. It is noted that current staff undertook data protection training in December 2023, therefore, UHS should ensure this training is refreshed when appropriate.
4. UHS should consider reviewing all policies and procedures in relation to the data protection legislation, especially Access to Records and ensure these are up to date with current legislation and reviewed frequently.
5. UHS should consider any additional improvements that can be made to the SAR handling process.
6. UHS should continue to monitor SAR compliance, in line with their KPI's, ensuring the appropriate oversight by senior management continues.

1.18. We invite UHS to provide a progress update of the above recommendations in six months of the date of this reprimand, i.e. by **25 September 2024**.