**THE DATA PROTECTION ACT 2018**

**AND**

**THE DATA PROTECTION (CHARGES AND INFORMATION) REGULATIONS 2018**

**PENALTY NOTICE**

To: [Organisation Name]

Of:

1. The Information Commissioner (“Commissioner”) has decided to issue [Organisation Name] with a penalty notice under section 155(1) (a) of the Data Protection Act 2018 (“DPA”). The penalty is being issued because of a failure to comply with regulations prescribing the payment of a charge to the Commissioner: the Data Protection (Charges and Information) Regulations 2018 (“the Regulations”).
2. This notice explains the Commissioner’s decision.

**Legal Framework**

1. [Organisation Name] is a data controller within the meaning of the DPA.
2. Under section 137 of the DPA, regulations may be made prescribing charges to be paid to the Commissioner by data controllers and requiring data controllers to provide the Commissioner with specified information.
3. The Regulations make provision for these charging and information requirements.
4. Regulation 2(2) requires a data controller to pay a charge to the Commissioner, within 21 days of the beginning of the relevant charge period, in the sum set out in regulation 3.
5. Regulation 3(1) prescribes the applicable charge to be:
6. £40 for a tier 1 organisation;
7. £60 for a tier 2 organisation;
8. £2,900 for a tier 3 organisation.
9. The definitions of the tiers are set out in regulation 3(2). Regulation 3(5) reduces each charge by £5 if paid by direct debit.
10. Regulation 2(3) requires a data controller to provide to the Commissioner, within 21 days of the beginning of the relevant charge period, specified information as at the first day of that charge period. That information is:
11. The name and address of the controller;
12. The number of members of staff of the controller by reference to specific bands;
13. The turnover of the controller by reference to specific bands;
14. Whether the data controller is a public authority.
15. Section 155(1)(a) DPA provides the Commissioner the power to issue a written notice requiring a person to pay an amount specified in the notice if the Commissioner is satisfied that the person has failed or is failing as described in, inter alia, section 149(5).

1. Section 149(5) describes a failure on the part of a controller to comply with regulations under section 137. The Regulations are regulations under section 137 DPA.
2. In accordance with section 158, the Commissioner has published a document specifying the amount of the penalty for a failure to comply with the Regulations. This document is entitled ‘Regulatory Action Policy’ and is published on the Commissioner’s website at <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>.
3. The Commissioner has specified that for a breach of regulation 2(2) and/or regulation 2(3) the following penalties will be applied:
4. A tier 1 organisation will be the subject of a £400 penalty;
5. A tier 2 organisation will be the subject of a £600 penalty;
6. A tier 3 organisation will be the subject of a £4,000 penalty.
7. In accordance with section 158(3) and the Commissioner’s published document, a higher penalty sum may be issued where there are aggravating factors. Aggravating factors may include failing to co-operate with the Commissioner, the provision of misleading or false information, or a previous history of non-compliance.
8. For the avoidance of doubt, a penalty issued under section 155(1)(a) DPA is in addition to the charge set in regulation 3(1) of the Regulations and payment of this penalty does not satisfy the requirement in regulation 2(2).
9. In accordance with paragraph 2 of Schedule 16 to the DPA, the Commissioner issued a Notice of Intent to inform [Organisation Name] that the Commissioner intended to issue this Penalty Notice and the reasons for that intention.
10. The Commissioner makes the findings of fact in this Penalty Notice on the balance of probabilities.

**The Contravention**

1. The Commissioner is satisfied of the following matters.
2. [Organisation Name] is a data controller liable to pay a charge to the Commissioner under the Regulations.
3. The charge due from [Organisation Name] became due on [Expiry Date]. The Commissioner calculates this date to be the beginning of the relevant charge period in accordance with regulation 2(6)(a).
4. [In contravention of regulation 2(2), no charge was paid to the Commissioner within 21 days.]
5. [In contravention of regulation 2(3), no information was provided to the Commissioner within 21 days.]
6. On the basis of the information available, the Commissioner is satisfied that [Organisation Name] is a tier [x] organisation under the provisions of the Data Protection Act (Charges and Information) Regulations 2018. The information upon which the Commissioner has reached that view is as follows:
7. The turnover for the company as shown on the last set of audited accounts at Companies House.
8. The number of staff employed by the company as shown on the last set of audited accounts at Companies House.
9. The previous registration for the company where it is identified as now being a tier [x] organisation under the provisions of the Data Protection (Charges and Information) Regulations 2018.
10. The Commissioner issued a Notice of Intent on [date] inviting representations by [date]. [No representations were received.] [Representations were received on [date] and the Commissioner has considered and taken into account those representations.]
11. [If reps say anything relevant about the fixed penalty amount (i.e. not about aggravating factors) briefly address here, including why it has not altered the fixed penalty category, or if it has.]

**The Amount of the Penalty**

1. In accordance with the Commissioner’s statutory published guidance, the applicable fixed penalty amount is **£[x] ([x] pounds)**.
2. In addition to the fixed penalty amount, the applicable charge set in regulation 3(1) of the Regulations for a tier 1/2/3 organisation is **£amount** **[pounds in words].**
3. Accordingly, the fixed penalty amount is £[x] and the applicable charge is [x], totalling **[x] [x pounds in words].**
4. [In addition to the fixed penalty amount, the Commissioner is satisfied that this is a case in which there are sufficient aggravating features to increase the applicable fixed penalty amount. The Commissioner considers the following to be relevant aggravating features of this case:

* [insert]
* [insert]

1. [insert response to any representations on aggravating factors if required]
2. In accordance with the Commissioner’s statutory published guidance, an additional penalty sum reflecting those aggravating factors is to be imposed in the sum of **£[x]**.]  
    **Conclusion**
3. The total amount specified in this Penalty Notice must be paid to the Commissioner’s office by BACS transfer or cheque by **[date 2019]** at the latest.
4. You have the right to appeal against this Penalty Notice to the First-tier Tribunal under section 162 DPA. You may appeal against the Penalty Notice (in whole or in part), or you may appeal against the amount of the penalty only.
5. Any notice of appeal should be received by the Tribunal within 28 days of this Penalty Notice.
6. Information about appeals is set out in Annex 1.
7. The Commissioner has the power to take enforcement action in respect of this Penalty Notice. No such action will be taken to recover a penalty unless:
8. The date by which payment is to be made specified in this Notice has passed;
9. Any appeal against the Notice has been decided or has otherwise ended;
10. In the case of a variation of the Penalty Notice, any appeal against the penalty variation notice has been decided or has otherwise ended;
11. The period given to appeal the Notice has ended.
12. In England and Wales and in Northern Ireland, the penalty is recoverable by Order of the County Court or the High Court. In Scotland, a penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

Dated the [date]



Traci Shirley

Group Manager – Customer Contact

Information Commissioner’s Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

**ANNEX 1**

**DATA PROTECTION ACT 2018**

**RIGHT OF APPEAL AGAINST A PENALTY NOTICE**

Section 162 of the Data Protection Act 2018 gives any person on whom a penalty notice or a penalty variation notice has been served a right of appeal to the First-tier Tribunal (Information Rights) (“the Tribunal”) against that notice, or against the amount set out in that notice.

In accordance with section 163, if you decide to appeal and if the Tribunal considers that:

1. the notice against which the appeal is brought is not in accordance with the law, or
2. to the extent that the notice or decision involved an exercise of discretion by the Commissioner, that the Commissioner ought to have exercised the discretion differently,

The Tribunal must allow the appeal or substitute another notice or decision which the Commissioner could have given or made. Otherwise, the Tribunal must dismiss the appeal.

You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

General Regulatory Chamber

PO Box 9300

Arnhem House

31 Waterloo Way

Leicester

LE1 8DJ

The notice of appeal should be sent so that it is received by the Tribunal within 28 days of the date of the notice.

A notice of appeal received after that time will not be admitted unless the Tribunal exercises its discretion to extend the time for complying with the rule.

The notice of appeal should be made on the form made available online by the Tribunal and should state:

1. your name and address, and the name and address of your representative (if any);
2. an address where documents may be sent or delivered to you;
3. the name and address of the Commissioner as respondent to the appeal;
4. the details of the decision to which the appeal relates;
5. the result you are seeking;
6. the grounds on which you rely;
7. you must provide with your notice of appeal a copy of the penalty notice or penalty variation notice in respect of which the appeal is brought;
8. if you have exceeded the time limit mentioned above the notice of appeal must include a request for an extension of time and the reason why the notice of appeal was not brought within time.

You should consider taking legal advice before commencing any appeal. At any hearing of the appeal a party may represent himself, or may be represented by any other person appointed for that purpose.

The statutory provisions concerning appeals to the First-tier Tribunal (Information Rights) are set out in sections 162-163 of the Data Protection Act 2018, and in the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI No 2009/1976) (as amended).