

The Data Protection (Bailiwick of Guernsey) Law, 2017
Administrative Fine Order

Case CAS-01951: Sure (Guernsey) Ltd

To: Sure (Guernsey) Limited

Of: Centenary House
La Vrangue
St Peter Port
Guernsey
GY1 2EY

1. The Data Protection Authority (**the Authority**) has decided to issue Sure (Guernsey) Limited (**Sure**) with an order imposing an administrative fine under sections 73(2)(g) and 74 of *The Data Protection (Bailiwick of Guernsey) Law, 2017* (**the Law**). The administrative fine has been imposed because the Authority has previously determined that Sure has contravened sections 6(2)(a) and 6(2)(d) of the Law.
2. This order explains the decision of the Authority to impose an administrative fine. The decision was reached following correspondence between the Authority and Sure and having taken into account representations received from Sure in response to the notice of proposed administrative fine order dated 22 June 2020 (the Representations). References to numbered sections and sub-sections below are references to the corresponding sections/sub-sections of the Law.

Legal framework

3. Sure, whose registered office is situated at Centenary House, La Vrangue, St. Peter Port, Guernsey, GY1 2EY, is a controller registered with the Authority.
4. Pursuant to section 6(1), Sure (as controller) is required to ensure that its processing of all personal data complies with the data protection principles in sub-sections 6(2)(a - g).
5. Pursuant to sub-section 6(2)(a), Sure is required to process personal data lawfully, fairly and in a transparent manner in relation to data subjects. Sub-section 6(2)(d) provides that personal data processed must be accurate and where applicable, kept up to date, and reasonable steps must be taken to ensure that personal data that is inaccurate is erased or corrected, without delay.
6. Where relevant provisions of the Law are not complied with, the Authority may by written notice to the person concerned under sub-section 73(1)(c), impose a sanction, including making an order under section 73(2). For the purposes of sub-section 73(1)(c), the Authority may, in any case where the person concerned has breached an operative provision, make an order requiring that person to pay a civil penalty by way of an administrative fine in accordance with section 74.
7. Section 111 defines 'operative provision' as being any provision of Parts II to X of the Law and includes sub-sections 6(2)(a) and 6(2)(d).
8. For the reasons set out more fully below, and following the inquiry the Authority conducted pursuant to section 69, the Authority has determined that Sure, as the controller, processed personal data without ensuring that such data were processed in accordance with sub-section 6(2)(a) (Lawfulness, Fairness and Transparency) and sub-section 6(2)(d) (Accuracy). Consequently, pursuant to sections 73 and 74, the Authority has decided to make an order imposing an administrative fine as a result of these failures.
9. The administrative fine for a breach of this nature should generally not exceed £300,000, but may be higher (up to an absolute maximum of £10 million) provided the fine is less than 10% of annual turnover or gross income in the preceding financial year, or (if calculated to cover the period of the breach in question) in a period of up to three years.
10. In determining whether or not to order an administrative fine in any particular case, the Authority must have consideration to sections 74(2) and (3), which set out the factors which the Authority must take into account.

Summary of the background to the Order

11. Sure is a controller, registered with the Authority. It holds a licence to provide telecommunication services and is one of the Bailiwick's main utility companies. In providing its telecommunication services, Sure processes a significant amount of personal data relating to most of the local community.

12. In compliance with its obligations under the Universal Service Obligation in the Bailiwick of Guernsey, Sure distributes annually 40,000 copies of its free directory across the Bailiwick. The Universal Service Obligation states:

"All users in the Bailiwick shall have available to them the services set out below at the quality specified, independently of geographical location and, in the light of local and national conditions, at an affordable price:

[...]

Directory enquiry services and directories:

- at least one subscriber directory covering all subscribers of direct public telephone service providers shall be made available to users and shall be updated regularly and at least once a year;*
- at least one telephone directory enquiry service covering all listed subscribers' numbers shall be made available to all users, including users of public pay telephones;"*

13. Following the distribution by Sure of *The Bailiwick of Guernsey Telephone Directory 2019/2020 (the Directory)*, Sure reported to the Authority, in accordance with its responsibilities under section 42, that it had identified a small number of entries in the Directory that may have been contrary to the relevant subscriber's wishes. Sure subsequently issued a press release in an attempt to explain the situation.

14. Consequently, it became clear that the Directory contained a number of mistakes and inaccuracies, including the publication of telephone numbers which should have been ex-directory.

15. Customer complaints to Sure regarding the Directory identified 216 reports of inaccuracies in relation to 244 service numbers. It is not possible to definitively and conclusively determine the number of affected customers, however, it does not seem unreasonable to consider that the number of inaccuracies/affected service numbers may be higher than recorded. This is due to Sure relying upon the data subjects themselves highlighting any inaccuracies.

16. Approximately 30 data subjects contacted the Authority in writing to make formal complaints. A larger number of queries were also raised via telephone. The Authority

notes that it is reasonable to conclude that at least some of these complainants have also contacted Sure.

17. On 1 October 2019, the Authority commenced an Inquiry under section 69 into the application of the Law by Sure (the **Inquiry**).
18. During the Inquiry, Sure indicated to the Authority that there were 119 entries in the Directory which should not have been published, with 19 customers being flagged by Sure as at risk of potential material harm.
19. It is the view of the Authority that harm to data subjects could result from the wrongful publication of telephone numbers, addresses or other personal data. As referenced in paragraph 18 of this order, Sure's own analysis identified 19 customers 'as potentially being high risk data subjects'. The Authority notes that Sure accepted that data subjects were at risk of potential material harm.
20. The Inquiry conducted by the Authority revealed that Sure's Privacy Policy did not make specific or clear reference to the way in which personal data would be processed in connection with the Directory. Moreover, the changes from previous methodologies in processing regarding the Directory, and the implications of these changes to subscribers, were not made clear to data subjects.
21. Further, it was clear from the Inquiry that Sure failed to carry out a Data Protection Impact Assessment (**DPIA**) or any other effective data/privacy risk assessment prior to implementing the changes to the methodologies for processing of personal data in relation to the publication of the Directory. Whilst not every processing activity requires a DPIA, an accountable controller would be expected to carry out an effective risk assessment to assess whether a DPIA is necessary in cases such as the present, where there is large scale processing, significant changes to processes and procedures, and processing which can have an impact on the daily life of individuals.
22. The Authority notes that Sure accepted that the "evaluation" undertaken was not sufficient to capture the risk that was presented in respect of the processing of personal data for the purposes of publication in the Directory. It also notes that Sure intends to implement a DPIA going forwards in order to mitigate such risks.
23. Sure's first response to the Authority, was excessively long and included content which was unrelated and irrelevant to the specific questions posed (the data and formatting summary sections, for example). However, it was noted by the Authority that Sure's subsequent submissions were more targeted and that all engagements were timely.
24. It was apparent that Sure did not appreciate the potential impact on certain data subjects. This is evidenced by a Guernsey Press article dated 24 September 2019 titled "Missing names partly down to data protection" with quotes attributed to Sure's Head of

Consumer and a section in Sure's first response to questions posed by the Authority titled "Key lessons learnt". It is noted that measures were put in place once the issues became apparent, to respond to and mitigate, risks arising from the situation.

25. Sure did not accept customer requests to recall and re-publish the paper version of the Directory. The Authority notes that it is Sure's responsibility to respond to a breach and take all the necessary and appropriate steps to mitigate the harm following a breach.
26. On 28 May 2020, following the Inquiry, the Authority issued Sure with a breach determination notice pursuant to section 72, within which the Authority explained that it considered that Sure had breached sections 6(2)(a) and 6(2)(d) of the Law.
27. As a consequence, the Authority has reviewed the matter and concluded that alongside the breach determination, it is appropriate for an administrative fine to be imposed.

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The decision to order an administrative fine

28. In considering whether or not to issue an order imposing an administrative fine, the Authority has had regard to the nature, gravity and duration of the breach, taking into account the specific requirements of sub-sections 74(2)(a - j). The following are the salient considerations provided for in sub-sections 74(2)(a - j) and to which the Authority had regard:

The nature, scope and purpose of the processing concerned (sub-section 74(2)(a) of the Law)

29. Sure publishes subscribers' names and landline telephone numbers by default in its telephone directory. Mobile telephone numbers should only be published with the explicit consent of the individual concerned. In some cases, addresses are also published. In the Directory there were 27,942 service numbers published and Sure distributed 40,000 paper copies of this directory. The publication of the directory is undertaken pursuant to its Universal Service Obligation, as enforced by the Guernsey Competition and Regulatory Authority.
30. In this case, and as aforementioned, there were approximately 30 data subjects who contacted the Authority as a result of the information published in the Directory, though the numbers affected were much higher. Telephone numbers and/or addresses linked to individuals were published against their wishes (to the extent that such individuals were being treated as "ex-directory") or entries that had appeared correctly and in accordance with subscribers' wishes in previous editions of the directory were changed to no longer reflect those wishes.
31. These inaccuracies resulted from a change in the process by which data was reviewed/considered for inclusion in the Directory, however no notification of this change in process was given to individuals (contrary to the principles of fairness and transparency).
32. Data subjects could suffer damage as a result of the wrongful publication of telephone numbers, addresses or other personal data. The same is also true of inaccurate information published. The harm/damage suffered by the affected data subjects as a result of the inaccurate information and/or ex-directory information being published either could include or does include financial loss, distress, inconvenience and similar other adverse effects. Whilst it is acknowledged that actual evidence of financial loss and/or physical harm may not have manifested itself at this point in time, the risk of such alone is sufficient and in any case the existence of such risk is acknowledged and accepted.
33. The fact that paper copies of the Directory including the inaccurate and/or "ex-directory" information continue to be in circulation and/or are accessible and/or available means that the duration of the breach is extended for the duration such

directories are in circulation. In so far as processing of data is unfair or involves inaccurate data, then such issues persist in relation to the paper copies. Steps could have been taken to reduce the impact (including recalling undistributed copies, circulating riders with updated information, etc.).

34. The Authority also notes that the online directory contained the same inaccurate data, and whilst steps have been taken to update the online directory as a consequence of the Inquiry, that information was (at least for a period of time) available to a wider audience than those within the Bailiwick.

Manner in which breach became known to the Authority (sub-section 74(2)(b) of the Law)

35. The directory was published on 10 September 2019. On 12 September 2019, Sure lodged a breach notification summary with the Authority regarding concerns it had relating to the contents of the directory, stating that it believed between 2 and 5 data subjects were affected. As time progressed, it became clear that the Directory contained a greater number of mistakes and inaccuracies, including the publication of phone numbers which should have been “ex-directory”.
36. On 24 September 2019, the Guernsey Press published a story titled ‘Missing names “partly down to data protection”’ with quotes attributed to Sure’s Head of Consumer. On 25 September 2019, the Guernsey Press published a further story titled ‘Don’t blame data protection for directory errors – “concerned regulator”’ with quotes attributed to the Data Protection Commissioner and addressing the story published the previous day.
37. As a result, the Authority received numerous communications and a number of complaints from concerned Sure customers. Whilst the initial communication of the breach was received from Sure, the true extent and scope became clear as a consequence of the media attention the matter generated and the communications from data subjects.

Whether the breach was intentional or negligent (sub-section 74(2)(c) of the Law)

38. Sure outsourced production of the 2019/2020 directory to a third-party publisher. Prior to this, Sure used two separate IT systems to generate the entries for the directory, which were not integrated and required manual updates. Upon carrying out the outsourcing, Sure identified that the two IT systems had diverged in content from each other. Sure assessed that one of the IT systems was a more accurate record of customer data and it was therefore used as the dataset for the Directory. Despite having identified that the selection of the database would need scrutiny, there was not an effective risk assessment undertaken of that selection process. The failure to communicate the change of data source also did not enable data subjects to highlight any concerns and was not in any case in accordance with the principles of transparency around processing. The inaccuracies and errors in information and Sure’s failure to carry

out a DPIA or an effective data/privacy risk assessment prior to the Directory being published appears to be a matter of negligence, though clearly conscious decisions were taken in respect of the approach to the publication of the directory which did not have due regard to data protection obligations.

The degree of responsibility of the person concerned (sub-section 74(2)(d) of the Law)

39. In correspondence, Sure recognised and identified areas in its systems and policies which required amplification and/or revision and acknowledged the inaccuracies and other issues with the data contained in the directory. Sure has accepted responsibility for the problems, which were outside of the control of the affected data subjects, and also recognised the importance of the issue in terms of relations with its subscribers and the nature of the press coverage it received. It has also accepted that “the evaluation undertaken was not sufficient to capture the risk that was presented”.

Any relevant previous breaches (sub-section 74(2)(e) of the Law)

40. The Authority notes that there have not been any similar personal data breaches reported by Sure in accordance with the Law.

The degree to which Sure has cooperated with the Authority to remedy the breach and mitigate the possible adverse effects (sub-section 74(2)(f))

41. The Authority notes that Sure’s first response to the Authority, whilst timely, was excessively long and included content which was unrelated and irrelevant to the specific questions posed (the data and formatting summary sections, for example). The Authority, however, notes that all time frames set by the Authority were met by Sure and subsequent responses were more targeted.
42. Further, Sure rejected calls from data subjects to recall the paper version of the Directory (but has confirmed that it has corrected errors to the online version). Accordingly, the issues remain ‘live’ and are continuing.
43. It is also worth noting that publication of information contrary to subscribers’ wishes has the potential to cause harm and such risk is continuing. This is especially the case given Sure’s decision not to recall the paper version of the Directory. There is also an element of inconvenience attached to individuals having to update their contacts with a new service number.
44. Sure has also informed the Authority that it has initiated a wide-scale review of its internal data protection systems and policies. It has also noted that it offered a security review for an individual, which that individual deemed unnecessary.

Any other action taken by Sure to mitigate any damage suffered by data subjects (subsection 74(2)(g) of the Law)

45. See comments above.

Any other aggravating or mitigating factor applicable to the circumstances of the case (subsection 74(2)(j) of the Law)

46. The Authority has taken into account the following aggravating factors –
47. A number of data subjects were assessed as having the potential to be caused harm as a result of the publication of their personal data in the Directory.
48. Sure decided not to recall or re-publish the paper version of the Directory which impacts the duration of the infringement, resulting in the potential for ongoing harm to the data subjects concerned. Steps to minimise the impact of a breach such as this may involve ceasing further distribution and/or seeking to recall copies where appropriate.
49. Prior to the changes in sourcing and methodology of processing of the data for the Directory, Sure did not carry out a DPIA and there was a lack of a sufficient assessment as to the potential impact on data subjects.
50. The Authority has also taken into account the following mitigating factors –
51. During the course of the Inquiry, a commitment was made by Sure to conduct a marketing campaign prior to publication of the next directory which will advise customers to check their online directory entry.
52. The Authority recognises the reasons given by Sure as to the necessity to upgrade the systems used to source the directory data.
53. Whilst making representations, Sure announced the initiation of a wide scale review of its data protection functions, systems and processes in light of this incident. Sure states that this will include both structural measures and additional cultural measures such as further training and awareness initiatives. When assigning value to this particular mitigating factor, the timing that this commitment was made (i.e. after breaches were identified by the Authority), should be taken into consideration.
54. Finally, and pursuant to the duty set out in section 74(3), the Authority has also taken into account the need for administrative fines to be effective, proportionate and to have a deterrent effect.

Reasons for the amount of the fine

55. Having considered the nature, gravity and duration of the breach, and taking into account the other specific requirements of sub-sections 74(2)(a - j) of the Law, the Authority has determined that the imposition of an administrative fine (and in the amount referenced) is appropriate for the following reasons:
56. To underline the gravity of the breaches for the affected data subjects (especially, but not only, those identified by Sure as at risk of potential material harm).
57. To reflect the inadequacy of Sure's Privacy Policy and the absence of any form of data protection compliance programme or any relevant risk assessment in compiling and publishing the Directory.
58. Having particular regard to the specific commitments that have been made, to ensure that Sure will in future give due and serious regard to its data protection obligations.
59. To serve as a deterrent for other controllers who may not be ensuring sufficient attention is being paid to data protection compliance.
60. To underline the failure by Sure to take all the appropriate and necessary steps to mitigate harm and the adverse effect of the breach.

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The amount of the administrative fine

61. Taking into account all of the above, the Authority has determined that an administrative fine in the sum of **£80,000** be imposed, which it considers is reasonable and proportionate given the particular facts of the case and the underlying objectives in imposing the sanction.

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Conclusion/Next Steps

62. The administrative fine imposed by this Order must be paid to the Authority's office by BACS transfer (account details to be provided upon request) or cheque by **30 September 2020** at the latest.
63. If Sure disputes the Order set out above, Sure may appeal to the Royal Court of Guernsey against the Order on the grounds set out in section 84 of the Law. Any appeal must be brought within the period of 28 days immediately following the date on which Sure receives written notice of this Order from the Authority. Please refer to Annex 1 of this Order, which is an extract of section 84 and contains information about the appeal procedure.
64. Finally, section 74(7) allows the Authority to recover the administrative fine as a civil debt owed and due to the Authority. Please note that the Authority will not take any action against Sure to enforce the administrative fine imposed by the above Order unless:
 65. the period specified within the Order for payment of the administrative fine has expired and all or any part of the administrative fine has not been paid in full;
 66. all relevant appeals against the determination and/or Order and any variation of it/them have either been decided or withdrawn; and
 67. the period for appealing against the determination and/or Order and any variation of it/them has expired.

Dated the 1st September 2020

Richard Thomas, CBE

Chairman, For and on behalf of the Data Protection Authority

The Data Protection (Bailiwick of Guernsey) Law, 2017**Section 84****Sanctioned person may appeal breach determination or enforcement order.**

- 84.** (1) The person concerned may appeal to the Court against –
- (a) a breach determination made by the Authority, or
 - (b) an enforcement order.
- (2) The grounds of an appeal under this section are that –
- (a) the determination or order was ultra vires or there was some other error of law,
 - (b) the determination or order was unreasonable,
 - (c) the determination or order was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure
- (3) An appeal must be made within the period of 28 days immediately following the date on which the person concerned receives written notice of the determination or order from the Authority.
- (4) An appeal is made by summons served on the Authority stating the grounds and material facts on which the appellant relies.
- (5) Where an appeal is made, the Authority may apply to the Court by summons served on the appellant for an order to dismiss the appeal for want of prosecution; and on hearing the application the Court may –
- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
 - (b) make such other order as the Court considers just.
- (6) The provisions of subsection (5) are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007, rule 51 of the Court of Alderney Civil Rules, 2005 or any similar civil rule of the Court of the Seneschal.
- (7) On the application of the appellant, the Court may, on such terms as the Court thinks just, suspend or modify the effect of the determination or order appealed pending the determination of the appeal.
- (8) Upon determining an appeal under this section, the Court may –
- (a) confirm the determination or order, with or without modification, or
 - (b) annul the determination or order and –
 - (i) remit the matter back to the Authority for reconsideration, or
 - (ii) make, in its place, any determination or order that the Authority is authorised to make under this Law,and make any other order it considers just.
- (9) An appeal from a decision of the Royal Court under this section lies to the Court of Appeal on a question of law.