Debt Recovery Seminar - Regulatory Challenges for Creditors

Tuesday 14 November 2017
Welcome

Jason Harte, Partner & Head of Debt Recovery
General Data Protection Regulation (GDPR) for Creditors

Mark Adair, Partner
Agenda

1. Overview and principles

2. 5 Key GDPR Provisions Impacting Creditors

3. How to Prepare for the GDPR
GDPR Overview
GDPR Overview

Uniform data protection law across EU from 25 May 2018

Replaces Irish Data Protection Acts 1988 and 2003

A lot of the principles are the same
GDPR Overview

GDPR = wider scope, raised standards and higher sanctions

More organisations will be captured by EU data protection law

Much tougher fines: 4% of annual group revenue or €20 million
Refresher on Principles of Data Protection Law
Principles of Data Protection Law

- Lawfulness and fairness and transparency
- Purpose limitation
- Adequate, relevant and not excessive
- Accurate and up-to-date data
- Kept no longer than necessary
- Integrity and confidentiality
- Accountability and compliance
Principles of Data Protection Law

- Lawfulness and fairness and transparency
- Purpose limitation
- Adequate, relevant and not excessive
- Accurate and up-to-date data
- Kept no longer than necessary
- Integrity and confidentiality
- Accountability and compliance
Key Principles

Transparency

Debtors must be aware (a) why their data is being collected, (b) what is being done with it, and (c) what their rights are to manage the data being held.
Key Principles

**Transparency**

Debtors must be aware (a) why their data is being collected, (b) what is being done with it, and (c) what their rights are to manage the data being held.

**Accountability and compliance**

Need be able to demonstrate compliance with the data protection principles.
5 Key GDPR Provisions Impacting Creditors
1. How the definition of personal data is changing
Definition of personal data

Regulators have gradually broadened their interpretation

IP addresses have been accepted as constituting personal data. GDPR puts this on a statutory footing

Identification numbers and online identifiers can be considered personal data

‘Sensitive personal data’ now includes genetic and biometric data
2. Automated Processing Restrictions
Automated Processing Restrictions

If collection proceedings initiated against the debtor, is this decision based on automated processing?

GDPR limits the circumstances to evaluate on basis of automated processing.

Generally right not to be subject to decisions based solely on automated processing which significantly affects them.

Unlikely to see practical change in obligations.
3. Accountability and Compliance
GDPR introduces the new concept of ‘accountability’

Controller must be able to demonstrate compliance with the GDPR

Controller must keep records and documentation about their processing activities

Requirement for organisations to carry out Privacy Impact Assessments before launching certain new products
4. Data Protection Officers (DPOs)
Data Protection Officers (DPOs)

Have to appoint a DPO where:

• large scale processing of sensitive data, or
• by virtue of processing, requires regular and systematic monitoring of data subjects on a large scale

DPOs can be:

• one for group of companies
• based in another Member State
• a staff member or a contractor

While a DPO can perform other tasks, these must not result in a conflict of interest
5. Security Measures and Breach Notification
Security Measures & Breach Notification

**Breach**

- **Likely to result in a risk to data subjects?**
  - **NO** → No need to notify
  - **YES** → **High Risk?**
    - **NO** → Notify Supervisory Authority (within 72 hours)
    - **YES** → Notify Data Subject and Supervisory Authority

---

**Location**

- Dublin
- London
- New York
- San Francisco

---

**MHC.ie**
Preparing for the GDPR
Why Prepare?

Prevention is better than cure…
Preparing for GDPR

1. Assessment

Understand and assess current personal data environment, information processes and procedures from the ground up

2. Gap Analysis

Current personal data environment, information processes and procedures vs. the GDPR requirements to identify any shortfalls
Preparing for GDPR

3. Remediation

Implement gap analysis – what corrective actions need to be taken in respect of GDPR, based on steps 1 and 2

3. Adherence

Maintain and update on-going compliance
Checklist

1. Review and update data protection notices, codes of conduct and policies
2. Examine existing contracts and supplier arrangements
3. ‘Paper trail’ of decisions relating to data processing to help demonstrate compliance
4. Training for customer facing staff
5. Nominate someone to look after data protection
Mark Adair
Partner
madair@mhc.ie
+353 1 614 2345