DATA PROTECTION TRIBUNAL

COMMUNITY CHARGE REGISTRATION OFFICER OF RUNNYMEDE BOROUGH COUNCIL v DATA PROTECTION REGISTRAR
[Case DA/90 24/49/3]

COMMUNITY CHARGE REGISTRATION OFFICER OF SOUTH NORTHAMPTONSHIRE DISTRICT COUNCIL v DATA PROTECTION REGISTRAR
[Case DA/90 24/49/4]

COMMUNITY CHARGE REGISTRATION OFFICER OF HARROW BOROUGH COUNCIL v DATA PROTECTION REGISTRAR
[Case DA/90 24/49/5]

Before the Chairman (Mr J Spokes): Mr G Lanchin and Mr L Plowman

APPEAL DECISION

These appeals were heard on the 17th, 18th, 19th and 20th September 1990. The appeals were held at a combined hearing pursuant to Rule 22 of the Data Protection Tribunal Rules 1985.

By an appeal duly lodged on the 22nd May 1990 the Community Charge Registration Officer of Runnymede Borough Council (herein called the C.C.R.O. for Runnymede) appealed against a notice of refusal of registration dated the 20th April 1990 served by the Registrar under Section 7 of the Data Protection Act 1984. The notice alleged that the Registrar was satisfied that the C.C.R.O. for Runnymede was likely to contravene the 4th Data Protection Principle.

By an appeal duly lodged on the 22nd May 1990 the Community Charge Registration Officer of South Northamptonshire District Council (herein called the C.C.R.O. for South Northants) appealed against an enforcement notice dated the 24th April 1990 served by the Registrar under Section 10 of the Data Protection Act 1984. The notice alleged that the Registrar was satisfied that the C.C.R.O. for South Northants was contravening the 4th Data Protection Principle.

By letter dated the 21st June 1990 (thereafter supported by further written grounds) the Community Charge Registration Officer of Harrow Borough Council (herein called the C.C.R.O. for Harrow) appealed against a notice of refusal of registration dated the 12th June 1990 served by the Registrar under Section 7 of the Data Protection Act 1984. The notice alleged that the Registrar was satisfied that the C.C.R.O. for Harrow was likely to contravene the 4th Data Protection Principle.

Each appeal raised common issues as to whether the holding of “property type” information on the computer database of a C.C.R.O. in the particular circumstances of each appellant was “personal information” and if it was whether it was held in breach of the 4th

Data Protection Principle which provides that personal data held for any purpose or purposes shall be adequate, relevant and not excessive in relation to that purpose or those purposes.

We heard evidence from Mr Jonathan Bamford and Mrs Rosemary Jay called on behalf of the Registrar; and from Mr David John Allum, Mr David Harold Goddard, Mr Robin William Bennie and Mr Keith John Jordan Lovsey called on behalf of the Appellants. There were agreed documents, circulars and correspondence before us. We were referred to statutes and regulations relating to Data Protection and the Community Charge and local Government and to the well known principles of law enunciated in ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation*** ***[1947] 1 K.B. 223***. We make the findings of fact and decisions as hereafter set out.

It was accepted and we find that each appellant held and wishes to continue to hold "property type" information on the computer databases for which they were either registered or had applied for registration under the Data Protection Act. Property type information for the purposes of this appeal is information that might, according to examples taken from the appellants' canvas forms, describe a property (inter alia) a house, bungalow, maisonette, flat, bedsit, mobile home, caravan, shop, chalet, or houseboat. Taking an example given in evidence it would be possible to extract from the database held by the C.C.R.O. for South Northants a list of every bungalow known to him within the area covered by his register.

The background to the appeals is the Local Government Finance Act of 1988. By Section 6 of the Act the C.C.R.O.s for each charging authority (as defined by Section 144 of the Act) were required to compile and then maintain a community charges register for the authority and to take reasonable steps to obtain information for that purpose. The register was to contain, in relation to each community charge, the nature of the charge, names and addresses (or a place) and material dates. By Section 6(6) any class specified by Section 40 applying in relation to a particular standard charge entry was to be stated. It was agreed before us that caravans were the only such specified class under existing legislation.

The Community Charge was to come into force from the 1st April 1990. The task for the C.C.R.O.s was a difficult one. We find that this timescale placed a very heavy burden upon the C.C.R.O.s and required them not to delay in making plans and preparations for the compilation of their registers. Thus initial plans and preparations were necessarily being made in advance of the passing of subordinate legislation contained in the Community Charges (Administration and Enforcement) Regulations which came into force in April 1989 and during the preparatory period practice notes provided by Government and advice from professional organisations, including model canvas forms, were continuing to be received.

Among the major sources of information for the C.C.R.O.s were entries in the rating lists and answers provided by members of the public who were required by the Community Charge legislation to complete Community Charge canvas forms. The format of the model canvas forms varied. The model form included with Community Charge Practice Note 8, issued by the Department of the Environment, included a question "Is part of the property occupied by anyone not listed above ? e.g. separate flat, annex, caravan etc". The model canvas form of one professional body made available to C.C.R.O.s in their preparatory stages included property type questions.

We find it could be expected that each C.C.R.O. would use a computer database and would be well aware at the earliest stages of the need to consider complying with data

protection law. In addition, Practice Note 3 issued in August 1988 specifically drew attention to this (paragraph 2.5) and Practice Note 4 (August 1988) and Practice Note 10 (January 1989) were both Data Protection Practice notes.

The Registrar received a number of inquiries and complaints relating to the questions asked on Community Charge canvas forms. The first complaint, received in June 1989, did not relate to a canvas form circulated by any of the appellants. We accept there were complaints and inquiries, but there is no evidence of a specific complaint, orally or in writing, as to content of the databases of any of the appellants in relation to property type information. Nonetheless the Registrar was entitled to make inquiries pursuant to his duty under Section 36 of the 1984 Act. He did so and in June 1989 requested specimen canvas forms from each of the 403 C.C.R.O.s. The canvas forms were received. There was no standard form and they differed in the questions they asked. 140 of the canvas forms asked for property type information. The appeals were not concerned directly with the contents of a form, but what data will be held on the computer database, whether the source of the information is the answer to a canvas form, the rating lists or any other source. The Registrar's inquiries provided information as to what information was to be held on computer. Preliminary notices covering property type data and other matters were issued. Following these notices undertakings not to hold property type data were forthcoming in terms which satisfied the Registrar in all but 14 cases. Thereafter enforcement notices, or refusal notices were served. All C.C.R.O.s served with such notices gave like undertakings in respect of property type information, save the three appellants. We accept the submission that there may be many reasons why a data user may prefer to resolve matters by undertaking rather than further proceedings and the individual circumstances applying to the area of one C.C.R.O. may not apply in another. It is significant we consider, however, that only in the cases of 140 C.C.R.O.s did the canvas forms seek property type information and therefore only a minority of C.C.R.O.s can have thought it of help to continue to hold property type information on their computer databases.

By Section 26 of the 1988 Act the C.C.R.O. was to be the Chief Financial Officer of the Council responsible for the charging and collection of the Community Charge and it was submitted that to regard the C.C.R.O. as a separate legal entity from the Chief Financial Officer is artificial. Our finding is that the statute specifically provided for the creation of the separate legal entity of the C.C.R.O. Once this is accepted, as it was before us, and the C.C.R.O. as a separate legal entity wishes to be a data user we have to consider the purpose or purposes for which he holds that data and seeks or has obtained registration under the Data Protection Act.

It was urged before us that the decision what information was to be retained on computer by a C.C.R.O. was a matter for the C.C.R.O.; that the 1984 Act preceded the 1988 Act and that therefore the C.C.R.O.'s powers and duties could be exercised notwithstanding the terms of the Data Protection Act, or alternatively that the decision as to what was adequate, relevant and not excessive was for the C.C.R.O. to decide, not the Data Protection Registrar; that Section 111 of the Local Government Act 1972 gave wide powers to the C.C.R.O. provided he acted properly and within "Wednesbury" principles. Further it was said that since Section 23 of the 1988 Act gave rights of appeal it was not appropriate to use the procedures under the Data Protection Act to control the information held. It was further submitted that the rights of appeal under Section 23 of the 1988 Act required the C.C.R.O. to hold property type information in order to respond to appeals that might be made without limit of time. We reject these submissions. Section 23 of the 1988 Act gives limited rights of appeal to aggrieved individuals. If appeals under Section 23 require the C.C.R.O. to prove

what information had been provided, the canvas form would be the prime source to which reference would have to be made, not the information held on the computer database. Section 23 appeals would relate to individual entries not to the holding of classes of information. In contrast, the Data Protection Registrar is required by Section 36 of the 1984 Act to promote the observance of the Data Protection Principles by data users. He has the power and duty in relation to an application to consider the provisions of Section 7 of the Act and in relation to an existing registration to consider the provisions of Section 10 of the Act. We conclude that these powers and duties under the 1984 Act are in no way limited by the fact that the 1988 Act is a later statute. This is so, even although a C.C.R.O. would find his task of compiling a register without use of a computer difficult if not impossible. It is quite apparent from the Practice Notes issued by Government, from the subordinate legislation and from the 1988 Act itself (see for example Section 26A) that everyone was well aware of the need to comply with Data Protection Principles. Furthermore the very fact of the applications or registration emphasises that Data Protection legislation applies.

Under Section 7 of the 1984 Act the Registrar shall not refuse an application for Registration unless by S.7(2)(b) he is satisfied that the applicant is likely to contravene any of the Data Protection Principles. Under Section 10 of the Act the Registrar may serve an enforcement notice if satisfied that a registered person has or is contravening a Data Protection Principle. It follows in our judgment that the Registrar has to be satisfied that a contravention or justification for refusal is established. The standard is the civil standard of proof and we accept as urged by the appellants that in deciding whether the burden is discharged one should have regard to the seriousness of the allegations. Here it is correct that the Tribunal does not lightly conclude that a C.C.R.O. will seek to offend a Data Protection Principle and it is material to take account of the consideration that it is not in the interest of a C.C.R.O. to hold more data than he considers will be of use in the discharge of the duties placed upon him by Statute. Nonetheless this is not a case where it is suggested that the C.C.R.O.s are deliberately breaching the law.

One of the issues raised before us was whether the Registrar had in law adopted the correct approach to the decision whether to refuse registration or issue an enforcement notice in the cases of the appellants. The basis for this submission was that in his written statement and when cross-examined Mr Bamford indicated that he was "not convinced" by the submissions made by the appellants including those made before the notices were issued. It was said this indicated that the burden of proof was being reversed and the appellants were being required to establish to the Registrar's satisfaction that he should not issue a notice. If the submission was well founded then we considered the Registrar would have erred in law. Accordingly we looked with care at the sequence of events. In each case the Registrar's inquiries followed his general inquiry into the use of property type information. In each case having formed the view that in relation to property type information there was a breach of the 4th Data Protection Principle he issued a preliminary notice to the particular appellant. Thereafter we are satisfied he took account of the general points applying and the particular points applying to the individual appellant. The evidence of the system of preliminary and final notice and in particular the fact that there was some variation between the terms of the preliminary and final notices establishes this to our satisfaction. Each notice stated in terms that the Registrar was "satisfied". Having regard to the evidence of Mr Bamford as to why the decisions were reached and the evidence of Mrs Jay in relation to her independent use of a "check list" in her evidence relating to Section 10(2) of the 1984 Act, we conclude that the Registrar was "satisfied" and did apply the correct test and that he did not merely use the word "satisfied" in the notices as a hollow formula. The use of such a word as

"unconvinced" by Mr Bamford was, we find, in the context that the Registrar did consider, as he was bound to, the points raised by the appellants, but, after consideration he was satisfied that the notices should be served. We consider this would have been made clearer if the word "unconvinced" had not been used.

This conclusion only disposes of one of the questions raised by these appeals. We have to consider whether the case is proved by the Registrar before use as required by Rule 19 of the Tribunal Rules; whether as required by Section 14 of the Act there were any errors of law and whether if the case is otherwise proved nonetheless the Registrar should have exercised his discretion differently.

It was submitted that the Registrar was wrong to consider all the general arguments in favour of holding property type information advanced by those upon whom he had served preliminary notices before making a final decision in individual cases. We are unable to accept that this resulted in prejudice to the particular appellants in the circumstances of this case. The Registrar indicated that this was what he proposed to do before making a final decision as well as taking into account the particular arguments and circumstances of each appellant. There was no obligation on an appellant to ask what these other points were and they did not do so. There is nothing to indicate that the Registrar took into account a point made against an appellant without giving him an opportunity to deal with it. If he had not taken account of general points made in favour of holding the data this could not only have worked to the disadvantage of an individual appellant but also produced anomalous results. For example, if one appellant had on general grounds persuaded the Registrar not to proceed for an alleged breach of the 1st Data Protection Principle in his case it would have created a potential injustice to other appellants to proceed against them for a breach of this Principle, merely because they had not raised such grounds, which applied equally in their case.

Each appellant holds and wishes to continue holding property type information on computer database, which information is intended to cover all properties in his area. From that information held on computer and the information held about individuals who are or may become Community Charge payers on the computer database it is possible to identify which individuals live in a particular identified property type. Having made this finding we are satisfied that property type information held by the appellants is personal data as defined by Section 1(3) of the Data Protection Act. Accordingly we reject the submission that the property type data is not personal data in the case of each of the three appellants.

Having concluded that property type information was personal data we had to consider whether we were satisfied that the holding of such data infringed the 4th Data Protection Principle that the data should be adequate, relevant and not excessive for the purposes for which it was held by the C.C.R.O. The C.C.R.O. had a duty by Section 6(8) of the 1988 Act, not only to compile and maintain the register, but also to take reasonable steps to obtain information for those purposes. Accordingly we looked at the question of whether we were satisfied there was a breach of the 4th Principle with the provisions of Section 6(8) in mind.

We considered the duty to maintain the register could properly include the obtaining and holding of at least some additional information on the computer database. For example, information about those who because of age were not yet, but were shortly to become, charge payers. The appellants submitted that we should not take a very restrictive view of the discretion that a particular C.C.R.O. might exercise as to the amount of additional

information he considered should be held to assist him to carry out his statutory duty. While there may be force in the argument that what is judged to be excessive should not in some circumstances be too strictly construed we concluded that it could not be decisive where the issue is whether a wide class of data such as property type information should be held without any kind of limitation as to the extent of what was held.

The property type information is intended to cover all properties within the area. It was stated in evidence before us that, for example, the holding of this information would enable a comparison to be made with a later canvas answer to check on the database whether a property previously described as a house was now described as a flat. Thus it was said if the check suggested there was a newly divided property a canvas form could be sent to those living in the part for which no form had been completed. By this example it was sought to justify holding property type information for everyone, including those already living in divided properties, in order to cover the possibility that not only had some properties recently been divided, or some divided buildings been returned to single units of occupation, but also that some of those in occupation had failed to comply with their duty to notify the C.C.R.O. that they should be on the register.

We find, however, that if what is asked in its full form is the question in the model canvas form in Community Charge Practice Note 8 to which we referred above, namely, "Is part of the property occupied by anyone not listed above ? e.g. separate flat, annex, caravan etc", an answer will provide adequate information to indicate if there may be others in the building liable as Community Charge payers. If this question in the model form is fully set out, which it is not in the appellants' canvas forms, we considered it would overcome the difficulty the appellants envisaged could arise where someone living in a flat might think the word "property" was only intended to cover his unit of accommodation. We observe that neither the appellant's property type question nor the model question seeks to elicit an answer as to how many flats there may be in a building. In considering whether information on property type was excessive we took account of the fact that while a householder might describe his home as a house or a bungalow on a canvas form there appeared no reason why, for any purpose connected with the maintenance of the register, a C.C.R.O. would wish to continue holding houses and bungalows as separate categories on his database. We come back to the example we have taken before: from the information held on the database as to property type all bungalows could be listed. This goes far beyond establishing whether there is one or more units of accommodation at a property.

A submission was made that property type information was necessary for the purposes of Regulation 4 of the Community Charges (Administration and Enforcement) Regulations 1989. This Regulation enables the C.C.R.O. to serve notice in writing upon a responsible individual at the "relevant" property when seeking information to enable him to form a view about who may be subject to a Community Charge. We are unable to accept that the need to serve a notice at the correct address can be assisted by holding on the database information that the premises are a house or bungalow, or one of an unspecified number of flats within a property. Furthermore such database information will not, we conclude, assist to differentiate one house from another in the circumstances given in evidence, namely a number of unnamed and unnumbered houses in rural lanes, which the Postman now differentiates only by the name of the occupier.

We were referred in the course of the hearing to the Guideline booklet Number 4 issued by the Data Protection Registrar entitled "The Data Protection Principles". Paragraph

4.2 relating to the 4th Principle advises that data users should seek to identify the minimum amount of information about each individual which is required in order properly to fulfil their purpose and that they should try to identify the cases where additional information will be required and seek to ensure that such information is only collected and recorded in those cases. We endorse this general guidance for those wishing to have a test to apply to answer the question whether personal data is adequate, relevant and not excessive for the purposes for which it is held. We find that the appellants held on database a substantial quantity of property type information obtained from voluntary answers on the canvas forms or from other sources. It was established that in holding such information the appellants were holding far more than was in fact necessary for their purposes.

The Data Protection Act notices were served by the Registrar well after the difficult task of compiling the initial register was completed by the C.C.R.O.s. We approach the question whether there are breaches of the 4th Data Protection Principle by allowing an element of leeway as to what an individual C.C.R.O. might properly require. Nonetheless, we conclude that by continuing to hold property type information so widely and generally and without seeking to identify any small proportion where it might be appropriate there is clearly a holding of personal data which is irrelevant and excessive. The Data Protection Registrar has identified in some detail the circumstances where property type may appropriately be held and which he would not seek to prohibit. Caravans are prescribed for the purposes of Section 40 of the 1988 Act and it may be necessary to hold data for the purposes of assessing the correct standard charge. It may be necessary for an address held on the database to include a property type description e.g. "The Cottage" to distinguish it from other premises sharing a common address. Apart from these we are satisfied that there are no other exceptions identified by the appellants which would justify the holding of further property type data on the basis of existing legislation.

We find, and the appellants appear to accept, that it is not relevant and would be excessive to hold wide classes of data merely on the ground that future changes in the law may in remote and uncertain future circumstances require further property types to be added to the existing exceptions identified by the Data Protection Registrar. We were referred to a Community Charge Consultation Paper as to changes that may be considered for certain standard charges. If they became law it appears that any variations would be likely to depend at least primarily not on the type of premises, but upon the use made of them.

Having reached the above conclusions we found it established that each appellant contravened and was likely to continue to contravene the 4th Data Protection Principle in relation to property type information. We next considered whether the Registrar had appropriately exercised his discretion to issue the notices. The Registrar had a discretion whether to serve an enforcement notice under Section 10 and we proceeded on the basis that he had a like discretion whether to refuse registration under Section 7. By Section 10(2) of the Act, the Registrar was required to take into account in deciding before issuing an enforcement notice whether the contravention had caused or was likely to cause any person damage or distress. We are satisfied by the unchallenged evidence of Mrs Jay that this was taken into account and that the decision was made to issue the enforcement notice despite the absence of evidence of damage or distress. Having regard to the nature of the contravention we conclude that the Registrar exercised his discretion in relation to Section 10(2) correctly.

We had to consider whether the Registrar ought to have exercised his more general discretion differently. The question as to property type information is from one viewpoint a

narrow issue. It may be said there is unlikely to be prejudice unless the information is used for a purpose other than for preparing the Community Charge Register. It is not disputed and we accept that C.C.R.O.s are responsible individuals and that they do not collect nor hold information for private gain but their duties are to act in the interests of the public as a whole. The integrity of the appellant's C.C.R.O.s was not in issue. The question for us to judge, having found they are each holding irrelevant and excessive data and thereby contravening the 4th Data Protection Principle, is whether as a matter of discretion the Registrar should have issued the enforcement and refusal notices. The C.C.R.O.'s had turned to the rating records to provide information to compile the initial Community Charge Registers. We find that they contravened the 4th Data Protection Principle probably by being somewhat reluctant to reassess how far they needed to retain all they had obtained from that source. On the issue of discretion we found force in the submission made by the Registrar that the observance of Data Protection Principles is important. We also found force in the submission that it is particularly important where information is held on a database by a user who is fulfilling a public duty and his powers include the right, enforceable by statutory penalties, to require individuals to provide information. If the contravention by each appellant had only related to a trivial few items of information then there might be a case for exercising a discretion not to serve the notices under appeal. Here we have found there was the wide and general holding of substantial quantities of property type information. One of the underlying Principles of the Data Protection Act is that excessive personal information shall not be held. We are satisfied the Registrar exercised his discretion correctly.

We were satisfied by the evidence before us that each appellant had been and was likely to continue to be contravening the 4th Data Protection Principle. This was established by the evidence as to property type information which we find to be personal information. We find no error of law affecting the validity of the notices appealed against. For the reasons given we were satisfied both that grounds were established for the issue of the notices and that the Registrar exercised his discretion correctly in issuing the notices. Accordingly we dismiss all the appeals.

No application was made for costs and in accordance with the provisions of Rule 24 of the Tribunal Rules we make no order as to costs.

The appellants asked that in the event of the dismissal of the appeals they should be given adequate time to comply with the 4th Data Protection Principle in the light of our findings. There was evidence of the continuing heavy workload on C.C.R.O.s in maintaining accurate registers. The issues resolved in these appeals have been known for some considerable time, but we are confident that the Data Protection Registrar will take account of the C.C.R.O.'s workload and perhaps also any immediate undertaking they may give not to make use of information held in contravention of the Data Protection Act while steps are being taken to delete it from the databases. Furthermore, it was understandable that the appellants would not wish to incur additional software expenditure until the appeal decision was known. However, it is a matter, not for us, but for the Registrar to decide how long to grant for the deletion of the contravening property type information.

John Spokes
Chairman
27 October 1990