The World Handicapping System – data protection issues for clubs

Background

With the advent of the World Handicapping System (WHS) in November 2020, many clubs will have received a recent request from their national golf unions for the provision of member data. Those who have not had such a request may well receive one soon.

We understand that the request from the national unions is likely to be accompanied by a statement to the effect that each club is not required to obtain the consent of each individual club member for the provision of their personal data. We understand that the data requested is the name, date of birth and email address of each golfer.

Each club holds member data and in doing so should hold that data in accordance with the principles set out in the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR"). Those principles include an obligation that the data is processed lawfully, fairly and in a transparent manner, as well as that it should be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes. The data should be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.

Each club, as a data controller, could face potential liability if it were to breach the GDPR, which can include criminal prosecution and civil penalties including fines. It is therefore of the utmost importance that each club is able to satisfy itself in relation the legitimacy of the processing and potential onward transmission of members' data requested. As will be seen from within this document, it could be a dangerous step for a club to simply rely upon the contention from a national golf union to say that the consent of individual members is not required for the transfer of the data.

Data protection can be a dry subject, but we encourage managers to stick with this advice sheet to ensure that they are comfortable with their position on data protection before progressing

Consent required?

We understand that at least one national golf union is relying upon article 6 of GDPR to say that it permits them to obtain the data of individual golfers without their consent because:

> (a) processing is necessary for the performance of the contract to which the data subject is a party or in order to take steps at the request of the data subject prior to entering into a contract; and

(b) processing is necessary for the purposes of the legitimate interests pursued by the controller

Contract: Looking at the first contention that the processing is necessary for the performance of the contract, our view is that it is highly unlikely that there is a properly constituted contract between the national unions and each individual golfer.

There will be a contract between each individual club and individual golfer and so if reliance is to be placed upon that contract, there is the possibility of this provision being applicable and that members consent may not be needed. However, it is subject to the proviso that a club will need to examine the nature of the contract with its member in great detail. For example, if the membership contract (normally the constitution) is drafted on the presumption that handicaps would be administered by the club rather than a third party, then this provision would not suffice. There is also a distinction to be drawn between a club that has a legal obligation to provide its members with handicaps and one where it does so voluntarily, although it must be accepted that through time and through course of dealing, there is a risk that any such voluntary term may become a contractual obligation. There is a further difficulty in relation to this contractual exception as well, in that the contractual provision of a handicap operated to this point would have been based upon the handicapping system that we have today, not the new WHS system. An express clause in the constitution between the club and member where the club promises to provide a handicap would need to be drafted sufficiently widely to include the new system. If the contractual obligation was to provide data on the basis of it being shared with a third party to administer handicaps, that may be sufficient. If it was only to provide it to an ISV such as club systems, then it would not.

There is also a point to consider that some club members will not want a handicap and so this contractual obligation could not be relied upon to avert the need for consent for them.

In summary, it is highly unlikely that there will be a contractual ground to entitle clubs to process all of this member data without consent.

Legitimate interest: turning to the second part of Regulation 6, namely the legitimate interest, we do so on the assumption that there is no contractual obligation to provide an official handicap.

In relying upon legitimate interest, there are three matters to consider, namely that the club is pursuing a legitimate interest, whether the transfer is necessary for that purpose and that the individual's interests in privacy of their data do not override the legitimate interest.

We are of the view that the national unions almost certainly do have a legitimate interest in making handicaps available. It is of course dependent upon the wishes of each individual.

Do the individual interests override a legitimate interest? An individual interest is unlikely to be overriding in the case of those wanting handicaps. For those who do not want a handicap, the individual interest serves to bolster arguments of the absence of legitimate interest and lack of necessity. This would force the national unions to consider that it cannot treat every golf club member of every club in the same way.

As for necessity, there are questionmarks here as to why the national unions require the additional data. Particularly with reference to emails, we understand that at least one national union contends that it is required for player identification. The biggest question here as far as necessity is concerned is why, when the ISVs are to remain in place, the email address is required in order for national unions to contact individual golfers. Even for those national unions where ISVs may not remain in place, the provision of the email address as an identifier may still be questionable unless it can be answered more satisfactorily in discussions between clubs and those national unions.

In summary, the legitimate interest exception cannot be relied upon safely in order to say with any certainty that clubs should send on all of their member data to the national unions.

We know from discussions with some ISVs that they propose to amend their system to allow an opt-in for the data transfer. This would be a sensible precaution whilst giving those who have no wish to have a handicap the right not to have the data transferred.

Conclusion

Our view is that a contention by a national union that member consent is not required in order to process member data is too bold and too wide to be accepted.

If an individual golfer does want an official handicap, then the national union's position that they have a legitimate interest in obtaining and processing data for the purpose of managing handicaps is valid but that does not necessarily mean that it is entitled to all of the data requested

The most effective way of ensuring compliance is to introduce an opt-in system informing members of the national union’s requirement as to their personal data if they want an official handicap.

Ultimately, if golfers want an official handicap under the WHS, then the national unions are perfectly entitled to process the data. At the moment, though, there is no safe reason to advise clubs to transfer this data without the consent of the members. Any pre-existing consents should be looked at carefully before clubs rely on those to release the data: is the consent wide enough to cover: (1) the bodies to whom the data is going; (2) the extent of the data; and (3) the purpose of which the

data is being released (bearing in mind it is in respect of a new handicapping system, not the system that is in operation to this point).

For any further advice in respect of legal matters affecting your golf club, please do not hesitate to contact the NGCAA on 01886 812943 or office@ngcaa.co.uk