

DECISION NOTICE 2 of 2022

Declaration of both Contravention and of No Contravention of Data Protection Law, DIFC Law No. 5 of 2020

Date: 12 December 2022

Parties to the complaint:

Complainant: Complainant (for purposes of anonymity)

Respondent: Quilter International Middle East, commercial license 0962 (in liquidation) (Q or QIME)

Executive Summary:

Complainant states that QIME has claimed to not manage data from their office, but provided evidence that he alleges does demonstrate such processing activities.

QIME existed only as a distribution company, and its commercial license is no longer active in the DIFC. Please see section 5 below for further information. The relationships it had were with independent financial advisers (IFAs) only, and not directly with clients. QIME provided marketing and distribution services to the Middle East market for the group entities that were based in the Isle of Man. Where IFAs and clients wished to invest in a financial investment product, it was done directly via the companies on the Isle of Man (IOM) and not with or via QIME. Therefore, ordinarily, client data was processed directly by Quilter International Business Services Limited on the Isle of Man.

QIME's personal data processing was limited to the personal data of its staff, and some data of IFAs for marketing and business purposes. As QIME's human resources and IT service centres were based in the UK/IOM, staff personal data would sometimes be transferred to the UK and/or IOM. Client personal data was not directly collected by QIME on an ongoing basis.

Issues Investigated and Brief Summary

1. **Did QIME breach Article 14 of the Data Protection Law, DIFC Law No. 5 of 2020 and the DIFC Regulations 2020 (the “DIFC Data Protection Legislation”) by failing to notify the Commissioner that they process client data as well as the data stated in its then current notification?** No, current and previous notifications indicate that client data is processed.
2. **Did QIME breach Article 26 of the DIFC Data Protection Legislation by failing to state that it transfers personal data outside of the DIFC to a Third Country?** In part, yes.

Findings

1. **Did QIME breach Article 14 of the Data Protection Law, DIFC Law No. 5 of 2020 and the DIFC Regulations 2020 (the “DIFC Data Protection Legislation”) by failing to notify the Commissioner that they process client data as well as the data stated in its then current notification?** No.
 - 1.1 Complainant provided evidence of instruction forms regarding changes of IFAs that contain client data, which are scanned and processed by the Quilter company. This appears to be client data processing.
 - 1.2 QIME states that there is no ongoing, regular processing of client data.

Finding 1:

QIME did not breach Article 14 of the DIFC Data Protection Legislation regarding its processing of client data.

Reasoning:

- 1.3 The entity collecting the instruction form is the IOM / UK Q entity, not the DIFC (QIME) entity. This is potentially an issue for the UK ICO / IOM regulator to determine if there is unlawful processing occurring. However, there is documentation that is passed through from the DIFC office to IOM that contains client personal data, such as instructions for various actions regarding their accounts.

Evidence:

- 1.4 The evidence provided by Complainant indicates that there is processing of personal data when clients directly instruct Quilter to approve instructions regarding to which IFA fees should be allotted where there has been a gap in time between changing of IFA, for example.

1.5 QIME notified of this in its notification to the Commissioner.

2. Did QIME breach Article 26 of the DIFC Data Protection Legislation by failing to state that it transfers personal data outside of the DIFC to a Third Country? In part, Yes.

- 2.1 Complainant alleged that documents are sent to the servicing office ‘onshore’ and the data is sent by them to the Isle of Man (IOM). Upon completion of the IFA arrangements, the IOM sends a mail confirming the change and the local Middle East DIFC office confirms the change of agency to the local office.
- 2.2 This is consistent with QIME’s position, however. To clarify, there is no apparent direct interaction with client data in relation to this facet of the business and processing activities, only with IFA data. The purpose of QIME was to provide sales and technical support to independent financial advisers in order for them to directly place business with the groups manufacturing companies, and they would process personal data of clients as and when needed.

Finding 2: Personal Data was transferred to a Third Country, IOM, without indicating that QIME was doing so in its notifications. However, IOM has always been an adequate jurisdiction recognized by the Commissioner’s Office, so the risk of such transfer would ordinarily be low due to the data protection regime there.

Reasoning:

- 2.3 Personal Data is transferred to the QIME IOM office, and until the 2022 notification update, there was no indication of that. QIME compliance team stated that this was due to a clerical error that has been rectified.
- 2.4 Also, IOM is an adequate jurisdiction as per Article 26 and Regulation 5 of the DIFC Data Protection Legislation, but the notification should have included this information regardless, as an indication that client data is transferred.

Evidence:

[From QIME correspondence]

The issue with regard to incorrect notification was due to an incorrect submission remaining on the portal. It should have been deleted as it was completed erroneously from the perspective of the IOM Business Services company rather than Quilter International Middle East Limited. When the renewal was due [REDACTED] asked [REDACTED] if the submission on the portal was correct and as [REDACTED] knew that should be no changes from the existing information [REDACTED] confirmed yes without checking it.

The classes of data submitted in the notification to the Commissioner's Office has also been clarified as only Staff, Suppliers and Advisors, and the Purpose only as Account and Staff Admin.

Declaration of Contraventions and Directions

3. In consideration of all issues and findings set out above, the Commissioner issues a declaration of the following contraventions of the DIFC DP Law by Quilter International Middle East:

- 3.1 **Contravention 1** - Not providing required information about the transfer of Personal Data to a Third Country in accordance with Article 26 of the DIFC Data Protection Legislation, as well as previous data protection legislation, i.e., Data Protection Law, DIFC Law No. 1 of 2007 and associated Regulations.
- 3.2 This contravention carries a range of maximum fine amounts, the highest maximum amount being \$25,000. Based on the circumstances and mitigating factors, the Commissioner directs that a collective fine of \$2000 should be issued to QIME.

4. Further Recommendations and Directions

- 4.1 The Complainant may wish to complain to or notify concerns to the IOM data protection supervisory authority regarding processing operations regarding client data that is transferred by the new owner of QIME, Utmost Holdings Isle of Man Limited, or, if appropriate, to the Guernsey data protection supervisory authority by the local Utmost International Middle East Limited, DIFC commercial license 3249 ("Utmost").
- 4.2 As QIME is in the process of winding up, Utmost must conduct a detailed assessment of its breach notification and data subject rights policies, and update and implement further safeguards where required.
- 4.3 The Commissioner may follow up with other authorities as needed should any additional, similar complaints arise.

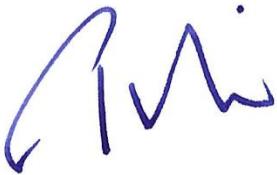
Review and appeal

5. QIME may ask the Commissioner to review a direction ordered under Article 59 of the DIFC DPL. Article 59(7) provides that:

"Any affected party may ask the Commissioner to review the direction within fourteen (14) days of receiving a direction under this part of the Law. The Commissioner may receive further submissions and amend or discontinue the direction"

6. QIME may also seek an appeal of the decisions or directions of the Commissioner that it may seek to appeal this Direction within thirty (30) days, in accordance with Article 63 of the DIFC DPL, or, in accordance with Article 59, QIME may seek judicial review by the DIFC Courts (the “Court”) of:
 - (i) the decision of the Commissioner to issue the direction; or
 - (ii) the terms of the direction
7. The Court may make any orders that it may think just and appropriate in the circumstances, including remedies for damages or compensation, penalties and imposition of administrative fines and findings of fact or alternative findings of fact in relation to whether or not the Law has been contravened.

Signed:

A handwritten signature in blue ink, appearing to read "Jacques Visser".

Jacques Visser
Commissioner of Data Protection
Level 14, The Gate
DIFC
Dubai, UAE