

RECIPIENT

**Data Protection Officer**  
The Department for Digital,  
Culture, Media & Sport  
100 Parliament Street  
London  
SW1A 2BQ

*By email*

URGENT LETTER

DATE

11 June 2021

OUR REF://RAN-00054

SENDER

Cassie Roddy  
*Solicitor*  
2 John Street, London.  
WC1N 2ES  
+44 (0)20 8080 3008  
cassie@awo.agency

[www.awo.legal](http://www.awo.legal)

Dear Data Protection Officer  
**Big Brother Watch**

We are instructed by Big Brother Watch (“BBW”). BBW is a UK civil liberties campaign group working to protect privacy rights.

We are instructed to write to you regarding the Events Research Programme (herein “ERP”) for Euro 2020 matches being played at Wembley Stadium on 13<sup>th</sup> and 18<sup>th</sup> of June 2021.<sup>1</sup>

In particular, we are instructed to write to you concerning the Privacy Notice which has been produced for the ERP in Wembley Stadium,<sup>2</sup> entitled “*UK Government Event Research Programme Privacy Notice – Wembley Stadium, UEFA EURO 2020*”, published on the 8<sup>th</sup> of June 2021.

Our client has concerns about certain features of this Privacy Notice and the lack of transparency it provides for individuals who will attend Wembley Stadium on the relevant dates. Our client also has concerns about the lawfulness of the processing which is described in this Privacy Notice.

As the Euro 2020 match is happening in Wembley Stadium this weekend, Sunday 13<sup>th</sup> of June, we ask for your response to this letter as a matter of urgency and no later than 4pm on Monday 14<sup>th</sup> of June. Our client requests that the issues with the Privacy Notice and DCMS’ data processing identified in this letter are rectified ahead of Sunday’s Euro 2020 match, failing which these issues are to be rectified by the following event on the 18<sup>th</sup> of June.

<sup>1</sup> <https://www.gov.uk/government/publications/information-for-ticket-holders-attending-the-euro-2020-events-research-programme-matches/information-for-ticket-holders-attending-the-euro-2020-events-research-programme-matches>

<sup>2</sup> [https://editorial.uefa.com/resources/026a-127817b0dd68-e0e597bd9f95-1000/lon\\_data\\_privacy\\_policy.pdf](https://editorial.uefa.com/resources/026a-127817b0dd68-e0e597bd9f95-1000/lon_data_privacy_policy.pdf)



1. Lack of transparency

The UK General Data Protection Regulation (“UK GDPR”) and Data Protection Act 2018 (“DPA”) require transparency of data processing activities. In particular, Articles 13 and 14 UK GDPR require certain information to be provided to individuals upon collection of their data.

The information to be provided to individuals includes:

- The name and contact details of the controller (if there are multiple controllers this needs to be made clear)
- Information about the personal data that is being collected and processed by the controller
- The purposes of the processing, including the lawful basis for the processing
- The recipients of the personal data
- The retention periods for the personal data

Article 12 UK GDPR stipulates that information must be provided in a concise, transparent, intelligible, and easily accessible form, using clear and plain language.

Article 5(1)(a) UK GDPR also mandates that personal data must be processed lawfully, fairly and in a transparent manner in relation to the data subject. Pursuant to Article 5(2) UK GDPR, the burden of proving compliance is on the controller.

At present, the Privacy Notice fails to provide the level of transparency which is required by the UK GDPR and DPA for the following reasons:

- a. Failure to provide transparent information on the roles, and relationship to DCMS, of the entities processing data as part of the ERP at Wembley Stadium

The Privacy Notice states that DCMS acts as “*overall controller of your personal data.. [sic]*”. Contact details for the “*data controller’s Data Protection Officer*” are provided as follows:

*“Data Protection Officer  
The Department for Digital, Culture, Media & Sport  
100 Parliament Street  
London  
SW1A 2BQ  
Email: [DPO@dcms.gov.uk](mailto:DPO@dcms.gov.uk)”*

DCMS states it is the “*overall controller*” under Article 4 UK GDPR notwithstanding that “*for the purposes of the Events Research Programme, DCMS do not directly collect or see any personal data.*”

Our client is concerned that the Privacy Notice refers to a vast array of entities, besides DCMS, who are processing data as part of the ERP in Wembley Stadium. This includes processing for purposes related to facilitating entry to the venues through the checking of special category data in the form of health data. Their respective roles and purposes for processing are described as follows:

- UEFA – *“Your personal data is collected by the tournament organiser (UEFA) to allow them to permit you entry to the event.”*
- Ticketing agent – *“If the 2D barcode on your NHS app is scanned by a steward, your personal data is collected by the ticketing agent for the purpose of entering the event.”* (our emphasis added)
- Stewards– *“If the 2D barcode on your NHS app is scanned by a steward, your personal data is collected by the ticketing agent for the purpose of entering the event.”* (our emphasis added), and *“The event stewards may use a scanning device or will otherwise carry out a visual check to confirm that the evidence you provide satisfies the requirements for entry to the event.”*

In addition, the Privacy Notice states that personal data will be also processed by Movement Strategies<sup>3</sup>, a private consultancy firm: *“The event will be recorded by a third party, Movement Strategies, to better understand ventilation and human behaviours at large events.”* By comparison with the other entities mentioned, Movement Strategies’ processing activities are described in more detail as follows:

*“Movement Strategies will be undertaking observations at and around the venue to categorise the behaviour of attendees in response to the event itself and also the operational overlay implemented as part of the pilot programme. Data will be collected via camera and manual observations and will focus on attendees conducting routine (‘public’) activities typically monitored at such events as part of standard safety and security measures. During these observations, the team will not be interacting with or asking anyone to do anything beyond their normal attendance. The team will also analyse various data sources post-event (e.g. CCTV footage) to measure different behaviours that may influence the risk of transmission within different settings. Any data captured will be stored, analysed and disposed of in a secure manner, consistent with legal requirements and industry best practice. A small sample of attendees may be asked to wear tracking devices for a period of time during their attendance. The wearing of this device is entirely voluntary. These attendees will be asked for their consent giving permission for them to wear this device. This device enables their movement (paths, locations, etc.) to be tracked within the event. No other information is generated. The data will not be associated with the individual’s identity. At any point, the participant can return the device and stop being tracked in this way.”*

The relationship between DCMS and each of the entities mentioned above, and their respective roles, is not described or clarified further within the Privacy Notice. DCMS states it is the *“overall controller”*; however, this is not clear nor is *“overall controller”* a term within the UK GDPR.

Thus, it is not clear, for instance, if DCMS considers itself to be in a relationship of joint controllership with UEFA (the tournament organiser), or if it considers UEFA to operate as an independent controller. The relationship with the ticketing agent is similarly unclear, as is the relationship with the stewards (albeit in the latter case, it is likely the stewards are either acting as agents of, or on the instructions of, another entity. However, no clarity is provided as to who that other entity is).

---

<sup>3</sup> Movement Strategies are a private consultancy firm specialising in crowd dynamics, <https://www.movementstrategies.com/> which, inter alia, offers services to services to stadiums to help them plan for reopening while maintaining social distancing in response to Covid-19.

A section of the Privacy Notice entitled “*How secure is your information with third party service providers?*” states that:

*“All our third-party service providers are required to take appropriate security measures to protect your personal data in line with our policies. We do not allow our third party service providers to use your personal data for their own purposes unless they are data controllers in their own right in relation to your personal data. Where they operate as our “data processors” (ie they process your personal data on our behalf and acting only on our instructions), we only permit them to process your personal data for specified purposes and in accordance with our instructions.”*

This section does not provide further clarity for individuals. Without delineating the capacity in which the various named entities in the Privacy Notice (UEFA, ticketing agency, stewards, Movement Strategies, etc) are processing data, i.e. as controllers, joint controllers, processors or agents, a data subject cannot understand what their rights are as against that entity and how to hold that entity accountable for any breach of their data protection rights.

Furthermore, to the extent that DCMS is engaged in relationships of joint controllership with any of the entities mentioned in the Privacy Notice, it will be aware of its obligations under Article 26(2) UK GDPR, where it will need to make the “*essence of the arrangement ... available to the data subject*”, which can be achieved, for instance, through providing this information in the Privacy Notice as part of its Article 13 / 14 UK GDPR obligations.

**DCMS is requested to clarify all its relationships with entities collecting personal data as part of the ERP at Wembley Stadium, which it is required to do by law to fulfil the transparency requirements of the UK GDPR. This is particularly urgent as all these entities are involved in the processing of Special Category Data, in the form of health data.**

b. Failure to fulfil other transparency obligations

DCMS has obligations to specify information about the personal data that is being processed by the controller(s), as well as to give the purposes and legal basis for that processing; to specify the recipients – including other controllers and processors - of the data; and to specify retention periods to be applied to the data. These issues will also need to be addressed within the Privacy Notice once DCMS has properly delineated its relationships with the entities processing data.

There is no clarity in the Privacy Notice regarding how the data collected by the various entities as a consequence of the EPR will be collected, processed or stored, how long it will be retained or with who or in what circumstances that data will be shared. For example, the only mention of data retention arises with respect to the processing by Movement Strategies which states “*Any data captured will be stored, analysed and disposed of in a secure manner, consistent with legal requirements and industry best practice.*” This does not give any clarity to individuals as it is not clear what legal requirements / best practices are being referred to.

No information is provided in respect of the processing by other entities beyond the extremely high-level outline of the purposes of the processing that has already been discussed.

**DCMS is requested to update its privacy policy to ensure full compliance with the transparency obligations as set out in the UK GDPR. To do this**

**2. Lawfulness of processing of special category data**

Special category data in the form of health data is also being processed for the purposes of delivering the ERP at Wembley Stadium. This includes processing of the “*evidence*” which individuals must provide to gain access to the ERP events, i.e. evidence of a negative Lateral Flow Test result, or evidence of vaccination status, whether this is confirmed by scans or visual checks. According to the Privacy Notice, various entities are processing this health data for the purposes of permitting entry, including UEFA, the ticketing agency, and stewards (although the capacity in which they are collecting this data, i.e. as controllers, joint controllers, processors, or agents of another entity, is not described or clarified).

Furthermore, DCMS recognises that “*admission to the venues implies that you have had a negative Lateral Flow Test result, or are fully vaccinated, all of which are classed as health data.*” As such, any processing of individuals’ data within the venues must also be understood as the processing of health data.

With respect to processing of that health data, DCMS states that the lawful basis for processing is:

*“UK.GDPR Art. 9 (2) h. processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of domestic law or pursuant to contract with a health professional and subject to the conditions and safeguards.”*

From the Privacy Notice, it appears this legal basis is relied upon by all entities which are conducting processing of health data.<sup>4</sup> However, relying on Article 9(2)(h)<sup>5</sup> UK GDPR appears inappropriate for the purposes of delivering the ERP at Wembley Stadium, whether that be for the purposes of processing data for the purposes of permitting access to venues or for the purposes of conducting behavioural observations.

This legal basis provides a lawful basis for processing health and social care data only where this has a basis in domestic law, i.e. where it meets the conditions set out in the DPA, or is pursuant to a contract with a health professional, and only where this is also subject to conditions and safeguards in Article 9(3)<sup>6</sup> of the UK

<sup>4</sup> The only processing of special category data which does not appear based on Article 9(2)(h) is processing conducted through the wearable tracking devices deployed by Movement Strategies which is said to rely on “consent” as its legal basis. It is worth noting the UK GDPR requires “*explicit consent*”, rather than consent, for the processing of SCD; however, Movement Strategies’ other processing activities, such as its camera and manual observations seemingly rely upon Article 9(2)(h) UK GDPR too.

<sup>5</sup> *Article 9(2)(h): processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3*

<sup>6</sup> *Article 9(3): Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.*

GDPR. Article 9(3) UK GDPR mandates stringent secrecy obligations, i.e. that personal data must be processed either under the responsibility of a professional subject to a professional secrecy obligation, or by another person who is under an obligation of secrecy, under domestic law or rules.

Section 10 of the DPA provides that where an entity relies on this basis, it also must meet the associated condition in UK law, set out in Part 1 of Schedule 1 of the DPA. Part 1, Schedule 1, DPA clarifies the definition of health or social care purposes in a domestic context, and refers to the obligations of secrecy under Article 9(3) UK GDPR and to the further elaboration of those conditions of secrecy under Section 11 DPA<sup>7</sup>:

*“Health or social care purposes*

*2(1) This condition is met if the processing is **necessary** for health or social care purposes.*

*(2) In this paragraph “health or social care purposes” means the purposes of–*

*(a) **preventive or occupational medicine,***

*(b) **the assessment of the working capacity of an employee,***

*(c) **medical diagnosis,***

*(d) **the provision of health care or treatment,***

*(e) **the provision of social care, or***

*(f) **the management of health care systems or services or social care systems or services.***

*(3) See also the conditions and safeguards in Article 9(3) of the GDPR (obligations of secrecy) and section 11(1).”*

The processing of data for the purposes of the ERP by any of the entities mentioned in the Privacy Notice, including DCMS, would not appear to satisfy any of the strict requirements which are needed to rely upon this lawful basis. It does not appear to our client that this processing is based upon a contract with a healthcare professional where the person processing the data is bound by professional secrecy obligations, nor does it appear that the processing is being conducted by another person who has a similar duty of confidentiality by law. Secondly, even if those requirements *were* met, the processing also does not obviously fall within any of the purposes outlined above in (a) – (f) above, and it is certainly not necessary for those purposes.

As such, our client considers that all processing of special category data in the form of health data conducted in reliance on this legal basis, Article 9(2)(h), is occurring unlawfully and in non-compliance with the GDPR. By DCMS’ own admission in its Privacy Notice, all processing of personal data conducted in connection with the ERP at Wembley Stadium involves the processing of SCD, therefore all processing activities described in the Privacy Notice would appear to be unlawful and in breach of Article 5(1)(a) GDPR as they lack an appropriate legal basis for the processing to occur.

<sup>7</sup> *Special categories of personal data etc: supplementary*

*(1) For the purposes of Article 9(2)(h) of the GDPR (processing for health or social care purposes etc), the circumstances in which the processing of personal data is carried out subject to the conditions and safeguards referred to in Article 9(3) of the GDPR (obligation of secrecy) include circumstances in which it is carried out–*

*(a) by or under the responsibility of a health professional or a social work professional, or*

*(b) by another person who in the circumstances owes a duty of confidentiality under an enactment or rule of law.*

A W O

**DCMS is requested to clarify how it considers that processing of health data for the ERP at Wembley Stadium can be justifiably based upon Article 9(2)(h) of the GDPR?**

3. DPIA duty

As you will be aware, a DPIA should be conducted considering the processing involves the large scale processing of special categories of data in the form of health data, as well as the systemic monitoring of publicly accessible areas on a large scale which is being conducted by Movement Strategies. **DCMS is requested to confirm that a DPIA has been conducted, and provide this to our client?**

4. Next steps

As discussed, we ask for your response to this letter as a matter of urgency and no later than 4pm on Monday the 14<sup>th</sup> of June.

We look forward to hearing from you.

Yours sincerely

*Cassie Roddy*  
AWO