

Response to the consultation “Our new approach to data protection concerns”

Introduction

We would like to thank all those who took the time and trouble to respond to our recent consultation.

We have reviewed the feedback and will use it to support the launch of our new service on 1 April 2014.

Points to clarify

There were three main areas we wanted to clarify following the consultation.

A number of respondents were concerned that our new service might mean we were no longer willing to accept concerns brought to us by the public.

This is not the case. Our proposed approach is intended to make sure that before we consider a concern the data controller has been given, and taken, the opportunity to explain their actions clearly to the individual.

We are only proposing to direct our customers back to data controllers if they were not given a clear explanation of the processing of their personal information before they raised their concern with us.

The second area we wanted to clarify was our interpretation and application of section 42 of the Data Protection Act. In our consultation we mentioned choosing to make assessments in certain circumstances. This, perhaps understandably, caused some respondents to question whether we were planning to stop providing a view about a data controller's compliance with the Data Protection Act when we receive public concerns.

We do not have any such plans. Under our new service, we still intend to assess an organisation's compliance in response to each concern as part of making our broader decision about whether an organisation's information rights practices should be improved, either in response to a single concern raised with us, or as a result of an accumulation of concerns raised over time.

We are, however, planning to make much greater use of the discretion afforded to us under section 42 of the legislation. We intend to make sure that the depth of our investigation into each concern we receive is proportionate to the potential severity of the matters involved.

This means, so long as a data controller has provided an individual with a clear explanation of their processing of personal information, they are unlikely to need to describe their actions again to us if the matter in question does not appear to us to represent a serious issue or we don't believe there is an opportunity for the data controller to improve their information rights practice.

If we think a data controller has contravened the legislation we will always tell them. But where the issue is not a serious one, we are likely to reach our decision based only on the data controller's explanation to the individual and our existing knowledge of their practices, where applicable.

The third area we wanted to clarify was our reference to publishing details of the number of concerns raised with us about organisations.

We recognise that this is a sensitive area and appreciate that depending on the size and nature of an organisation, it may be reasonable to expect a certain number of concerns to be raised with the regulator.

We intend to publish a range of information about our service on a routine basis.

We will be publishing regular reports summarising the information rights practice improvements made, and regulatory action taken, across the sectors we regulate. These reports will be similar to the quarterly reports we have been publishing for some time now summarising our work under the Privacy and Electronic Communications Regulations (PECR).

These reports will explain our regulatory work in detail. They will include our views about the risks and threats to compliance in each sector, the actions taken in each sector to improve practices and any plans for future improvements.

The PECR reports we have published so far have included a lot of information about the number of concerns raised with us and there has been a regulatory benefit to placing the information, in context, in the public domain.

We do therefore also intend to publish a report once a year to coincide with our main annual report, identifying the organisations responsible for generating the most data protection concerns brought to our attention during the previous year. This report will not differentiate between concerns which went on to result in regulatory action, those which were caused by a contravention of the law or those which proved to be misguided. We will however be inviting each organisation to provide some narrative to accompany their entry on the report to set it in context. This will allow each organisation to describe the amount of

personal information it processes and the steps it takes to ensure compliance with the law.

Finally we also intend to publish the full version of this report in October each year, also complete with the narrative described above, showing the total number of concerns brought to our attention broken down by organisation. This will be an extension of the report described above but will show all the concerns we have received.

With any report we publish summarising the number of concerns raised with us we will always include a statement to explain that organisations processing high volumes of personal information are likely to generate a proportionate number of concerns to the regulator.

We don't intend to begin publishing these reports proactively until our new service has been in place for at least six months.

What happens next?

Our new service is due to launch on 1 April 2014. We will update our website to explain things clearly to customers. When we contact organisations who are the subject of concerns, our approach will be based on proportionate investigation to identify opportunities to improve information rights practice.

For those attending our annual Data Protection Practitioners conference in Manchester on Monday 3 March, staff from our Operations directorate will be running the clinic 'Our new approach to data protection concerns' and we will be available to answer questions about our new service at various points throughout the day at our stand in the 'Marketplace' area.