



Ministry of **JUSTICE**

The knowing or reckless misuse of personal data – introducing custodial sentences CP 22/09

List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to: ollie.simpson@justice.gsi.gov.uk or fax to: 020 3334 2245. Thank you.

<p>Question 1. Should the Secretary of State introduce custodial penalties for offences committed under section 55 of the DPA?</p>

<p>Comments: Yes, the public need to be assured that legislation to protect their data is backed up by appropriate sanctions which provide sufficient deterrent to those who would disclose or obtain it unlawfully. However this will not assist in preventing those outside the jurisdiction, for example, staff in call centres outside the EU who do not have similar data protection legislation. Unless companies and company officers are made directly responsible under DPA legislation, for the actions of staff contracted to them such risks will continue unmitigated.</p>

Question 2. **Subject to the responses to Question 1, the Government believes that the level of the custodial sentences should be set at the maximum available under the power (i.e. twelve months' imprisonment on summary conviction and two years on conviction on indictment) Do you agree? If not, at what (lower) level do you believe the maximum sentence should be set?**

Comments: We agree that financial penalties alone are an insufficient deterrent to those who are in the lucrative business of large scale illegal disclosure of data. However we question whether a two year imprisonment maximum penalty will in reality deter the organised criminal involved in the highly lucrative mass data trade. Moreover the discretion of the courts may mean that, in practice, maximum sentences are rarely likely to be utilised.

Question 3. **Subject to the responses to Question 1, the Government proposes to bring in the new custodial penalties from April 2010, when the intention is that the ICO be given enhanced powers. Do you agree with this approach?**

Comments: Yes, the penalties should be brought in as soon as possible.

Question 4. **Subject to the responses to Question 1, the Government proposes to commence the new defence for anyone who can show that he was acting for the special purposes with a view to publishing journalistic, literary or artistic material, in the reasonable belief that the obtaining, disclosing or procuring was in the public interest alongside the increased penalties. Do you agree with this approach?**

Comments: Whilst it is clearly desirable to have a free press to challenge and hold to account the Establishment and wrongdoers, the Data Protection Act is essentially designed to protect the data of the individual, most of whom are not in positions of power or privilege. Investigative journalism is an acceptable defence as it can often be argued that disclosure is in the public interest. Although artistic and literary purposes are usually included with journalism in law, it is difficult to justify disclosing someone's personal data for the purposes of art or literature, which is usually produced for commercial gain. It is difficult to see how this differs from the illegal disclosure of data for money which the proposed custodial sentences are intended to deter. Perhaps a caveat should be included, as in the Public Interest Disclosure Act, that limits the protection of this defence to a strict 'public interest' test, in order to ensure that the defence is not exploited by those who acquire data primarily for financial gain.

Please complete the section overleaf to tell us more about you.

About you

Please use this section to tell us about yourself

Full name	The Institute of Counter Fraud Specialists
Job title or capacity in which you are responding (e.g. member of the public etc.)	The Executive Committee
Date	18/12/09
Company name/organisation (if applicable):	Institute of Counter Fraud Specialists
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If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Institute of Counter Fraud Specialists,

We are a representative body of counter fraud practitioners.
