

Summer 2000

compliance briefing

experian

**Current regulatory
and compliance
issues affecting
Experian clients**

Welcome to the second issue of Experian's Compliance Briefing – the newsletter designed specifically to keep clients up-to-date with what's happening in the compliance and data protection arena.



Firstly, thank you to those who gave feedback on our first issue.

Our **Compliance and Data Protection Forum** is shortly to commence, and if you are interested, please contact Mike Bradford, Director of Compliance and Data Protection, as soon as possible (mike.bradford@experian.com). This will provide your compliance professionals with a forum for discussing non-competitive issues and topics of mutual interest.

In this issue, we follow up our commentary on the **Data Protection Act 1998** with a more in-depth look at new rights, duties and powers – very topical following the publication of the Commissioner's Report in July.

The **Electoral Register** and **third party data** issues, both of which were covered in our *Spring* issue, are also updated. We also cover the new Guide to Credit Scoring in more detail.

We hope you find this issue of Compliance Briefing both interesting and informative.

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The Electoral Register and third party data

Our first issue of Compliance Briefing gave the background to the changes to the Electoral Register, embodied in the Representation of the People Act 2000, and the likely effect these would have on the continued availability of the full Register for commercial purposes.

We also considered the issues and Commissioner's views on third party data and the effect of the Data Protection Act 1998.

Both topics are still under review and we shall continue to keep you updated in future issues of Compliance Briefing and through your account managers.

Electoral Register

Discussions with the Home Office and Treasury have continued and, whilst the way forward is still not finalised, the position regarding what data and services Experian will be able to provide is now a little clearer.

The Home Office expects to produce draft Regulations towards the end of the year, which will then be available for consultation.

The Home Office have announced that, although the 'rolling register' will be available from 16 February 2001, electors will not be able to 'opt out' from the Register until the annual collection in October 2001. This means that there will be no major changes until early 2002 when the new edition of the Register is captured.

It is expected that the Regulations will define the permitted uses of the full register. These are likely to cover law enforcement, the prevention of crime, fraud and money laundering and application risk assessment (including the use of the full Register in application risk scorecards). The full Register is also likely to be available on a selective basis for

employment verification and for forwarding correspondence as part of initiatives such as that which followed the pension mis-selling problems. The position of identity verification, for example to support e-commerce, is still the subject of debate between the cross-industry working group and Government departments. List cleaning (i.e. the exclusion of names from mailing lists) is also still under discussion, as is statistical analysis in a non-credit context.

Third party data

The detailed research and analysis undertaken by the cross-industry group has continued. A document has been prepared, which sets out the supporting evidence for the continuing use of relevant third party data and makes a number of proposals. It is recognised that changes are both necessary and desirable, but the cross-industry group believes that solutions can be achieved which reflect the balance between the needs for individual privacy and responsible lending.

The document has been considered by trade associations and submitted to the Data Protection Commissioner for discussion.





Elizabeth France
Data Protection Commissioner

Data Protection Commissioner's Report

Elizabeth France, Data Protection Commissioner, published her annual report on 12 July. The ODPC's mission is:

We shall promote respect for the private lives of individuals and in particular for the privacy of their information by:

- implementing the Data Protection Act 1998; and
- influencing national and international thinking on privacy and personal information.

The ODPC's overarching aim for the next year is "to ensure that the statutory duties placed upon us are met, efficiently and effectively...".

Some key statistics from the Report include a total of 4,570 complaints

received in the 11 months to the end of February this year, representing an increase of 36% pro rata on the previous year. Of these, 18% related to direct marketing; 31% to consumer credit and 51% to other issues.

To quote from the Commissioner's foreword:

In many ways the 1984 Data Protection Act was ahead of its time, recognising the risk to private life presented by the development of new technology, but uncertain how that risk would manifest itself. Today, the part played in our everyday lives by new technology and the processing of personal data which that involves is a significant one. The development of online transactions has highlighted some of the risks, but we should not lose sight of the

importance of a proper framework of control wherever personal data are processed. What data protection law – new or old – provides is that framework.



Data Protection Act – new model consent clauses

While Data Controllers have some breathing space until October 2001 for processing already underway prior to 24 October 1998, we should all be reviewing our data practices to ensure we are meeting our obligations under the eight principles.

The FLA, through its Data Protection Working Party, has been working with the ODPC for many months on the development of **model consent clauses** for lenders which will meet the requirements of the Data Protection Act 1998. We are sending a copy to all CAIS members. If any other client would like a copy, they should contact their Experian account manager.

The FLA model provides a basic disclosure notice and individual lenders will need to amend the wording to reflect their own circumstances. The correct disclosures are critical if searches are undertaken with Experian and/or account performance and/or fraud prevention data, etc. is shared.



The notice also addresses the on-going use of bureau data as part of account management, for example, the use of Delphi for Customer Management.

Remember that verbal consent or a click-through approach is acceptable so long as this is effective and fair in the circumstances, but ensure there is an adequate consent audit trail.

If data is sensitive, explicit consent is a condition, which is generally accepted to mean that a signature or tick in an opt-in box is needed.

Consider using the Commissioner's new **Information Padlock** shown here, by way of a signpost to help with transparency and draw attention to what the customer needs to know.

The material contained in Compliance Briefing is based on Experian's understanding of legalisation etc at the time of going to print. This publication is intended as a guide and is not to be used as a substitute for professional advice. No liability can be accepted by Experian for any loss or damage incurred as a result of any material contained in this publication.

Data Protection Act 1998

Your customers' rights. Your duties and the Data Protection Commissioner's powers



It is dangerous to think that the new Data Protection Act is merely an extension of the 1984 Act. It is not. In particular, it contains important new rights for Data Subjects, imposes new duties on Data Controllers, and grants new powers to the Data Protection Commissioner.

Rights of Data Subjects

In summary these are:

- Right of subject access (*section 7*)
- Right to prevent processing likely to cause substantial damage or distress (*section 10*)
- Right to prevent processing for the purposes of direct marketing (*section 11*)
- Rights in relation to automated decision taking (including the right to be informed of the logic behind any such decisions) (*section 12*)
- Right to take action for compensation (*section 13*)
- Right to take action to rectify, block, erase or destroy inaccurate data (*section 14*)
- Right to ask the Commissioner to assess whether the Act has been contravened (*section 42*)

It is important to remember that when interpreting the rights of Data Subjects, the Data Protection Commissioner must also take into account Article 8 of the European Convention on Human Rights, which is embodied in the Human Rights Act. Data Protection is very much an aspect of the individual's right to privacy.

Duties of Data Controllers

Central to compliance with the Act is processing in accordance with the eight data protection principles. It is important to note the changes to these principles

compared with the 1984 Act. In summary the principles relate to data being:

- Fairly and lawfully processed
- Limited for purpose
- Adequate and relevant
- Accurate
- Not kept longer than necessary
- Processed in accordance with the Data Subject's rights
- Secure
- Not transferred to non EEA countries without adequate protection

It is equally important not to underestimate the broader definitions contained in the Act for Data Controllers, personal data, manual data and processing.

New powers of the Data Protection Commissioner

The Data Protection Commissioner has a very broad statutory duty to promote good practice; in other words, not only to ensure compliance with the Act, but to go beyond this into the *spirit* of the legislation.

Section 51 of the Act covers the Commissioner's duties in respect of awareness, promotion of good practice, issuing Codes of Practice and assessment of processing. In respect of Codes of Practice a CCTV Code has been issued and it is anticipated that consultation will commence around September this year in respect of a Human Resources Code of Practice covering the use of employee data.

It should be remembered that the Act creates criminal offences under Section 55 for unlawful obtaining of data.

Finally, although the Commissioner has no power of audit under the Act, by

virtue of section 51(7) she can assess the processing of personal data for the following of good practice, with the consent of the Data Controller.

Following on from this, the ODPC is currently developing an audit manual in order to enable such assessments to be made on a sound and consistent basis and also to provide the framework for Data Controllers to assess their own compliance. It is anticipated that the audit manual will, therefore, provide a useful reference point for the Commissioner, third party auditors and Data Controllers themselves.

It is understood that the audit manual should be available by the end of the year.

Public awareness campaign

The ODPC will be running an advertising campaign (including TV) from August to increase consumers' awareness of their new rights under the legislation. It is understood that this campaign will be sufficiently low key to take into account the number of Data Controllers currently relying on the transitional relief afforded to them for processing already underway before 24 October 1998.

In respect of all data protection issues, clients are encouraged to visit the Commissioner's web site at www.dataprotection.gov.uk on a regular basis. The site is constantly updated and will also shortly include a number of frequently asked questions as a forerunner to a more complete guide to the new Act.

Guide to credit scoring 2000

In the last issue of Compliance Briefing we announced that after discussions between the Office of Fair Trading and a cross-industry group lasting over two years, the new edition of the Guide to credit scoring had been published. This replaces the previous Guide issued in 1993.



The Guide has been drafted with the Data Protection Act 1998 in mind and in particular section 12 which sets out an individual's rights in relation to automated decision taking. As on previous occasions, the Guide has a Foreword by the Director General of Fair Trading and for the first time a Commendation from the Data Protection Commissioner.

There are no fundamental changes and the Guide continues to reflect industry best practice, but any lender failing to comply with the Guide could face enforcement action under the Data Protection Act. If you have not already done so, we recommend that you review your own procedures to ensure that they meet the requirements of the new Guide.

The Guide itself is divided into ten sections, the first covering 'Scope of the Guide' which is self explanatory.

The next section relates to the 'Principles of design'. This specifies that someone building a scorecard must comply not only with all relevant legislation, including the Data Protection Act, but also with the Principles of Reciprocity. To ensure the accuracy and relevance of the scorecard, appropriate sampling, development and validation techniques must be used.

Next comes 'Principles of implementation'. This requires that the system be tested to ensure that scores are calculated and cut-offs applied accurately. The accuracy of data capture must be monitored as should any overrides. Clear operating procedures should be issued.

Training of operational staff and monitoring are the key requirements for the operation of a scoring system. The monitoring should cover not only such areas as accuracy of data capture, but also the efficiency of the scorecard. This will include the measurement of such aspects as score stability, demographic population

stability and override performance. There is an expectation that the scorecards are adjusted or redeveloped as necessary.

The next two sections which cover 'Principles of decision making' and 'Communication with applicants' are probably the most important parts of the Guide.

The Guide recognises that additional factors may be taken into account, such as the need to verify the identity of the individual or validate application details. It also allows for policy rules based on the lender's specific commercial requirements, but red lining or discrimination against individual applicants is outlawed.

The Guide specifies that automated decisions are permitted under the 1998 Act where:

- Credit grantors are considering whether to enter into a contract or with a view to entering into such a contract or in the course of performing such a contract
- The application is granted or steps have been taken to safeguard the legitimate interests of the individual, for example by allowing the individual to appeal.

Although the Guide is aimed at automated decisioning such as scoring, the same principles apply to manual underwriting.

Applicants should be advised that scoring will be used – normally this would be a simple statement on the application form. If asked at the application stage, an explanation of scoring should be given. Some lenders may wish to provide a leaflet at this point. A model is included as an appendix to the Guide.

Lenders are encouraged to put reject decisions in writing where appropriate and provide as full an explanation as practicable. However, there is no need to disclose the score characteristics.

'Appeals and review procedures' are specified. If rejection is based on a bureau score an explanation should be given on how that score is used in the process. However, it must be made clear that the decision rests with the lender rather than merely referring the applicant to the bureau.

The lender is required to establish designated officers to whom appeals should be sent. These officials should undertake a realistic review of the case and will have the authority to override the original decision. The applicant should have the right to provide additional information to support their application. The appeals process must be properly documented so that all staff know how to treat such cases. If an explanation of scoring has not already been given, it should be provided at this stage.

The Guide acknowledges the lender's right to make an alternative offer, perhaps a different term or rate.

Repeat applications should be treated on their own merits and not merely rejected because of a previous decline. However, this does not apply if there is evidence of fraud or where multiple applications are received in a short period.

Cases must not be rejected where the data which caused the rejection is the subject of a Notice of Correction or Dispute. In such cases the application must be manually reviewed.

As with appeals, lenders must establish a complaints procedure which must be explained to applicants who wish to take such action. Where a lender is a member of an organisation that offers an independent complaints procedure, the applicant should be informed of this if the complaint cannot be resolved through the lender's own internal process.

Copies of the Guide can be obtained directly from the Finance & Leasing Association – contact martin.haycock@fla.org.uk or through your Experian account manager.

Legislative training from the professionals...

Understanding consumers' rights when granting and declining credit	20 September – London
	15 November – Nottingham
Insolvency legislation – creditors' rights	21 September – London
	7 November – Nottingham
Mastering the interpretation of CAIS codes	26 September – Nottingham
	28 November – Nottingham
An introduction to the consumer credit industry	26 September – London
	21 November – London
Data Protection Act 1998	26 September – Nottingham
	24 October – London
	14 November – Edinburgh
	16 November – Nottingham
	14 December – London
Using credit scoring to make the right decision	27 September – Nottingham
	30 November – Nottingham
Credit management and the law	11 October – London
Commercial debt recovery through the courts	19 October – London
	7 December – London
The law relating to consumer credit	5 December – London

Experian has a dedicated client training department offering more than 140 one-day courses annually, covering over 25 consumer and commercial credit topics. Experian is the largest UK provider of consumer credit training and is rapidly becoming a recognised leader in the provision of commercial credit related courses.

Experian runs an unrivalled programme of public training courses, focusing on all aspects of the consumer and business credit life cycle; from understanding the Guide to Credit Scoring and its impact in an underwriting environment to Data Protection and the legal aspects of lending. Here are a few of the courses which may be of interest to you and your colleagues.

For further information, please contact Vivienne Millington at Experian on 0115 934 2603 or e-mail vivienne.millington@experian.com

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