



Data Protection Good Practice Note

Tied agents and independent financial advisers

This good practice note is aimed at firms of tied agents and independent financial advisers. It gives advice on common issues raised with the Information Commissioner about how to comply with the Data Protection Act 1998. The term 'firm' includes sole traders and partnerships.

Control of personal information

Firms need to understand what responsibilities they have for the personal information they handle. A company, as the legal entity, will be responsible for overall compliance with the Data Protection Act. In the case of a sole trader, the trader himself will be responsible for compliance, and in the case of a partnership, the partners will be responsible for compliance.

The Information Commissioner regularly receives complaints about disputes between firms and individual advisers or employees over who can decide how information is used. Disputes often arise when an adviser, whether employed or self-employed, leaves to join another firm. The adviser may view customers as his clients rather than clients of the firm and may take personal information about clients with him when he leaves.

The seventh data protection principle requires firms to take appropriate technical and organisational measures to protect personal data. If a client can show that they have suffered damage as a result of the unauthorised use of their information, this could lead to a claim in the courts for compensation and could damage a firm's reputation. Furthermore, if an adviser or other employee takes personal data without permission from a firm, that individual could have committed a criminal offence.

Firms need to make sure that their advisers and staff are clear about what they can and cannot do with the personal information they use, including to whom it can and cannot be disclosed. To avoid confusion, firms may wish to include clauses in employment contracts to clarify who controls the personal information. It should also be very clear what will happen when an adviser or employee goes to work for another firm.

Fair use of personal information

Advisers often have to disclose client details to other organisations, including to credit reference agencies. It is important that clients understand what will happen to their personal information. Firms will need to tell clients:

- who is responsible for handling their personal information;
- what their personal information will be used for; and

- any other information needed to make the use of their personal information fair. What this information will be, will depend on a firm's particular use of clients' personal information. However, firms should tell individuals about any disclosures they make, unless this is obvious. They should also tell them whether any credit searches will take place and what the consequences of those searches will be.

Firms should also be careful not to use personal information they hold in a way that is outside what their customers would reasonably expect.

Marketing

Many firms will want to send marketing to clients in order to promote their business and the products and services they sell. If firms wish to do this, they should tell individuals at the outset and give them the opportunity to object. If an individual does object, either when the firm collects the personal information or later, the firm must not send that individual direct marketing again unless the individual specifically asks for it.

Firms should also be aware that there are particular rules about marketing by electronic means, for example, by e-mail or phone. For further guidance, go to www.ico.gov.uk, or call our Helpline on 01625 545 745.

Notification

If firms use personal information to give advice on financial services and products and keep this information on computer, they will need to notify the Information Commissioner about their processing of personal information. Advice on how to do this can be found on our website or call our Notification Helpline on 01625 545 740.

Good practice recommendations

When processing personal data, firms should consider the following good practice recommendations, which will help compliance with the Act.

- Make sure employees are clear about what they can and cannot do with personal information and who it can be disclosed to
- Make sure employees are clear what use they can make of personal information in the event they leave the firm
- Make sure customers know whose client they are, what their information will be used for and to whom it may be disclosed

More information

If you need any more information about this or any other aspect of data protection, please contact us.

Phone: 01625 545745 or 08456 30 60 60

E-mail: please use the online enquiry form on our website

Website: www.ico.gov.uk