

# legal advisor

What is the Data Protection Act and what steps should firms take to ensure they aren't breaking the law? Michael Clinch, senior litigator and partner at law firm Picton and Howell, gives a brief overview and highlights the basic issues that affect businesses

**W**henever you collect, save or transfer personal data about an individual you are under a legal obligation to comply with the requirements set out in the Data Protection Act. Failure to do so can be a criminal offence, so if your business relies on the use of personal data you should notify the Information Commissioner and put internal procedures in place to ensure compliance with the act.

## Personal data

The Data Protection Act does not apply to company details such as its name and address. However, if your database includes the name of any individual within the firm, this amounts to the processing of personal data and the act applies. Rules are stricter if you process highly sensitive data, including religious belief, racial or ethnic origin or political opinion.

## The eight principles

Under the act, personal data must be:

1. Fairly and lawfully processed.
2. Obtained only for specified and lawful purposes.
3. Adequate, relevant and not excessive in relation to the purpose/purposes for which they are processed.
4. Accurate and kept up to date.
5. Kept for no longer than necessary.
6. Processed in accordance with rights of data subjects.
7. Protected by appropriate measures against unauthorised or unlawful processing, accidental loss, destruction or damage.

8. Kept within the EU unless adequate level of protection for rights and freedoms of data subjects is granted.

## Subject access rights

Individuals have the right to see all data held about them. Firms must comply but can charge up to £10 provided they reply within 40 days of payment of the fee.

## What you should do

- Notification Tell the Information Commissioner that you are processing personal data and do this every year.
- Internal guidelines and procedures Review these to ensure that all personnel

dealing with personal data are aware of the obligations under the act. Take legal advice or get a lawyer to undertake a data protection audit of your procedures.

- Website Make sure that a Privacy Statement is posted online. Alert visitors and ask their consent before processing their personal data. Check to see whether you're using cookies and if they are allowed.
- Contracts If you are exporting data outside the EU, use Model Clauses in contracts relating to the export of data. These are designed to protect the rights of individuals whose data is being exported. Failure to use these clauses could result in prosecution. ■



## PC Advisor personal data privacy campaign

**H**ave you ever been sold a PC that contained someone else's information? Or has a PC you returned to a company been resold without being properly wiped? If either of these things have happened to you, we want to hear from you. If you find data on a PC purchased from the DSG (Dixons Stores Group) don't forget to email Simon Turner, the managing director at [simon.turner@dixons.co.uk](mailto:simon.turner@dixons.co.uk).

Email us at [pcadvisor\\_consumerwatch@idg.com](mailto:pcadvisor_consumerwatch@idg.com)  
and we'll take it from there



# contacts

Where do you turn when things go wrong? There may be an issue with the ad that attracted you in the first place. So if you've been left with a useless piece of kit for which the manufacturer made extravagant claims, it could be worth informing the ASA



**T**he ASA (Advertising Standards Authority) is the governing body responsible for regulating all non-broadcast advertising. Its role is to ensure that all advertisements are 'legal, decent, honest and truthful'. Its regulations cover advertisements wherever,

and in whatever form (other than radio or television), they appear. The ASA has recently clarified a series of codes that also governs advertising over the internet.

The ASA stresses that these codes do not in any way affect your statutory rights under the Data Protection Act. The Distance Selling Directive will provide protection for buying online.

and in whatever form (other than radio or television), they appear. The ASA has recently clarified a series of codes that also governs advertising over the internet.

## Code name

The codes apply to the following forms of advertisement: online advertising in 'paid for' space (for example, banner and pop-up advertising); advertising in commercial emails;

## I'm free! (well, nearly)

The ASA produced a report in September 00, which looked at the promises from various ISPs of 'free' web access. Despite the nature of the offers, what emerged from this was that many of these ISPs actually charged for an element of their services. Also, because of the stated lack of cost, deals were often heavily oversubscribed, and many users were disappointed.

ASA regulations require advertisers to show that they have anticipated demand, making it clear if stocks are limited and, hopefully, preventing the past fiascos of PCs-for-£100 from recurring. According to the new rules, where companies have failed to anticipate demand, they will be in breach of the codes.

This aspect of the ASA's code could start the ball rolling against firms becoming 'victims of their own success'. Regrettably, this phrase is fast becoming a euphemism for companies whose board members failed miserably to conduct standard business assessments of demand.

## Surf yourself silly

The ASA also refused to uphold claims against BT that its ads claiming 'unlimited surfing every weekend with BT Internet' were misleading. The complaint was made because BT kicks customers offline after two hours, whether or not they are downloading or uploading data at the time. This was deemed not to be in contradiction to its claims of 'unlimited surfing' because people can reconnect immediately. That may seem odd, but the ASA tries hard to be fair and regularly upholds complaints made against the big boys.

## Making your voice heard

To make a complaint about an advert call 020 7580 5555. Alternatively, fill in the claim form at [www.asa.org.uk](http://www.asa.org.uk), via the Contacts icon. All complaints must be made in writing and sent to: Advertising Standards Agency, 2 Torrington Place, London WC1E 7HW. ■

## Where to turn for help

**I**f the worst happens, it's good to know where to go for help. Here we list some important contacts which can help with a variety of problems, from software copyright issues to non-delivery or payment problems.

- Citizens Advice Bureau **For general legal advice and to find out your rights. For information, or to find your nearest CAB, call 020 8333 6960 or visit its website at [www.nacab.org.uk](http://www.nacab.org.uk).**
- Consumers Association **For advice on all consumer transactions, call 020 7830 6000 or turn your browser to [www.which.net](http://www.which.net).**
- Fast (Federation Against Software Theft) **Regulators of software copyright law. Clivemont House, 54 Clivemont Road, Maidenhead, Berkshire SL6 7BZ. Call 01628 622 121 or visit online at [www.fast.org.uk](http://www.fast.org.uk).**
- Office of Fair Trading OFT, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX. **For general enquiries, telephone 0845 722 4499 or log on to [www.ofc.co.uk](http://www.ofc.co.uk).**
- PC Association **Non-profit organisation offering advice to both trade and consumers. You'll find tips on buying safely and a forum for complaining when things go wrong. Turn your browser to [www.pcauk.org](http://www.pcauk.org).**