

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 18 December 2007

Public Authority: Jobcentre Plus (an executive agency of the Department for Work and Pensions)
Address: 2nd Floor
The Adelphi
1-11 John Adam Street
London
WC2N 6HT

Summary

The complainant requested the number of complaints received by Jobcentre Plus, an executive agency of the public authority, against a specifically named doctor. The doctor was engaged by the public authority via an outsource contractor to assess health for the purposes of considering eligibility for Disability Living Allowance. The public authority originally cited section 40. During the Commissioner's investigation, the public authority sought to rely on section 3(2) of the Act, stating that complaints information is not held by it for the purposes of the Act as it is held by the contractor as part of its role as an employer. The Commissioner's decision is that the information, if held, would be held on behalf of the public authority in accordance with section 3(2) but the public authority should not confirm or deny whether it is held as section 40(5) applies.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

The Request

2. On 31 January 2005 the complainant requested the following information from Jobcentre Plus, an executive agency of the public authority:

"I need to know if there have been any other complaints against Dr [X], and if so, how many? I also need know the areas in which he operates as an EMP."

(EMP is an abbreviation for Examining Medical Practitioner.)

3. The public authority responded to the request by letter of 3 March 2005. The post codes of the areas in which Dr X carried out work for the public authority were provided but section 40 was cited in relation to the number of complaints received about the doctor. By way of explanation, the public authority is required, under the Social Security Act 1998 to determine awards of, among other benefits, disability working allowance. Where a medical examination is required to determine eligibility for that allowance, this is carried out by Atos Healthcare (previously Atos Origin Medical Services) (the contractor) on behalf of the public authority. No further explanation or detail was provided in relation to the application of the exemption. This letter was treated as a refusal notice for the purposes of this investigation.
4. The complainant requested an internal review of the decision not to disclose the number of complaints in a letter of 7 March 2005.
5. A review of the decision was conducted and the outcome communicated to the complainant on 29 March 2005. The original decision not to disclose the information was upheld and no further detail was given to explain which subsection of section 40 applied and why.

The Investigation

Scope of the case

6. On 28 April 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, the complainant wished the Commissioner to consider whether the number of complaints against Dr X should be disclosed.
7. The complainant indicated within this letter to the Commissioner that, should the Commissioner decide that the information requested regarding this specific doctor should not be released, he would amend his request to give it a wider scope. It would no longer relate to one particular doctor but to the complaints received against all EMPs in one area over a specified time.
8. The Commissioner's duty under section 50 is to investigate complaints made following requests for information to public authorities. It is not the Commissioner's duty to convey a request from a complainant to the public authority. This aspect of the complainant's letter was not therefore given any consideration by the Commissioner in his dealings with the public authority whilst investigating this complaint. The complainant may, of course, exercise his rights under the Act and make his amended request to the public authority directly.

Chronology

9. The Commissioner wrote to the public authority on 7 June 2006 by post and fax following a telephone conversation of 31 May 2006. This letter indicated the Commissioner's preliminary view and asked for details of the appeals procedures in place to allow the public sufficient redress in cases where adverse decisions are made in relation to their claims for disability living allowance.
10. The public authority's response to the Commissioner's letter of 8 June 2006 detailed the procedures in place to ensure that standards were met. Regular auditing takes place in addition to the procedures followed when a complaint is received of which there are two tiers and the option of appeal to a Tribunal is available to members of the public should they disagree with an assessment made of them.
11. On 5 September 2006, the Commissioner wrote again to the public authority requesting any further submissions that it may wish to make. He explained that there was some consideration being given to the whole area of complaints against doctors within the Information Commissioner's Office (ICO) and that his initial view may not be the final decision in this matter.
12. The public authority's response of 15 September 2006 to this letter provided further detailed submissions explaining the level of redress available to the public. It also stated that any information relating to complaints was not held by the public authority at the time of the request.
13. The letter explained that any information on complaints against the doctors that carry out these assessments is held by the contractor that provides the service. This is because the doctors are employed directly by the contractor and not the public authority.
14. The Commissioner wrote to the public authority on 20 September 2006 to gain further detail regarding the assertion that the information was not held at the time of the request. He asked questions surrounding the level of information that is held by the public authority and to what degree the contractor reports back to the public authority.
15. These points and questions were all addressed by the public authority in its letter to the Commissioner of 2 October 2006. Having considered the response, the Commissioner emailed the public authority on 11 October 2006 to ask whether the complaints information may be regarded as held by the agency on behalf of the public authority within the meaning of section 3(2)(b) of the Act.
16. He sent a more detailed email to the public authority on 18 October 2006 asking for more information regarding the public authority's statutory functions and its relationship with the contractor.
17. In an email of 23 October 2006, the public authority responded to the Commissioner stating that it did not believe that information held by the contractor was held on its behalf by that contractor.

18. The public authority provided a fuller response to the Commissioner's email in a letter of 2 November 2006. It addressed the questions about the relationship between the public authority and the contractor and explained why it felt that complaints information was not held on its behalf. The public authority stated that in its opinion, information would be held by a contractor on behalf of a public authority if the contractor was contractually obliged to gather that information.
19. At the time that this matter was being investigated, there was another complaint of a similar nature being investigated by the Commissioner, this related to the number of complaints received by the General Medical Council about a named doctor,. As the matters are distinctly related, the ongoing issues being dealt with in that case and the internal advice being sought was applied to the facts of this matter. This other case will be referred to further below. Its reference is FS50064698.
20. Following the above consideration, the Commissioner emailed the public authority on 18 May 2007 to conclude the consideration of the question of whether the information would in fact be held for the purposes of this request. He asked for more information regarding the level of involvement that the public authority had with complaints received about doctors.
21. The public authority responded on 25 June 2007 and provided further information relating to the questions asked by the Commissioner. At this point, there was another case, besides the one mentioned above being considered, also for the number of complaints received by this public authority. The public authority had provided a copy of the contract between itself and the contractor on this other case (reference: FS50141015). The Commissioner therefore considered the contract in context of both of these complaints.
22. Having given consideration to the submissions made by the public authority over the course of the investigation and in light of some aspects of the contract provided, the Commissioner emailed the public authority again on 1 August 2007. He pointed out the comments made that would suggest that the information would be held on behalf of the public authority and invited it to provide a detailed case, with reference to the contract, for why the information would not be held on its behalf.
23. The email response from the public authority of 28 August 2007 detailed its arguments in support of the information being held by the contractor as an employer and not on behalf of the public authority.

Analysis

Procedural matters

24. The text of each of the sections referred to below can be seen in the attached legal annex.

25. Section 17 of the Act sets out the requirements for a refusal notice. A refusal notice must provide the exemption relied upon and explain why it applies if it is not obvious.
26. The refusal notice of 3 March 2005 did not fully comply with section 17(1)(a), (b) and (c) of the Act as it did not cite full details of section 40 or explain why it applied in any detail.

Would the public authority hold the information for the purpose of the Act?

27. Section 3(2)(b) of the Act states that information is held for the purposes of the Act if it is held by another person (this includes other organisations, businesses and such) on behalf of the authority. In this case the public authority has claimed that any information about complaints that may exist would not be held by it but by Atos Healthcare. The Commissioner has therefore had to consider whether any such information would in fact be held by Atos Healthcare on behalf of the public authority.
28. In order to make his decision in relation to section 3(2)(b) the Commissioner considered the contract between the contractor and the public authority. He also examined the detailed submissions provided by the public authority.
29. The relationship between the public authority and the contractor is governed by the contract between the parties entitled "Medical Services Agreement". The Commissioner notes that under the terms of this agreement:
 - a) The contractor must maintain systems that can provide full details of complaints and enquires that can be used by the public authority; this specifically includes the monitoring of complaints.
 - b) The contractor is required to record complaints information and to provide a quarterly report detailing the number of complaints against doctors.
 - c) The contractor must inform the public authority of all serious complaints (as defined in the agreement) made against its doctors.
 - d) The contractor must keep the public authority informed of the progression of serious complaints through the agency's complaints procedure.
 - e) In specified circumstances the contractor shall inform the public authority of all the circumstances of particular non-serious complaints upon request.
 - f) Only the public authority can revoke the required approval needed by doctors to undertake examinations.
 - g) The contractor is, upon the public authority's request, to furnish it with information relating to the rights of data subjects including but not limited to subject access rights.
 - h) The contractor must assist the public authority in meeting any requests for information in relation to the agreement in connection with the Act.
30. The public authority's position is that it would not hold the requested information and neither would the contractor hold such information on the public authority's

- behalf. In correspondence with the Commissioner the public authority stated that the contractor, as a business, needs to hold information for its own purposes. To enable the public authority to effectively manage the performance of the contract some information can be called for as part of the contract management process.
31. The agreement stipulates that the contractor's employees can only undertake medical examinations, for the purposes of determining state benefits, if they remain approved for such by the public authority. In order to determine this approval the public authority will, amongst other things, have recourse to the type and frequency of complaints collated by the contractor. In this regard the information collected and organised by the contractor is in effect for or on behalf of the public authority to enable it to make a determination regarding approval. The fact that the contractor also holds the information for its own purposes does not prevent it holding it on behalf of the public authority.
32. A point of note is that the public authority itself stated that it would consider information to be held by a contractor on behalf of the public authority if the contractor is contractually obliged to gather that information. Given some of the detail contained within the contract and submissions by the public authority, it does appear that the contractor is obliged to gather complaints information, albeit not in any specified format. This obligation extends to serious and non-serious complaints against doctors.
33. As mentioned previously, one of the responsibilities of the Secretary of State is to determine awards for disability working allowance. This duty is conferred upon the Secretary of State by sections 8 and 11 of the Social Security Act 1998. Section 19 of that Act states that,
- “Before making a decision on a claim for a relevant benefit, or as to a person's entitlement to such a benefit or to statutory sick pay or statutory maternity pay, the Secretary of State may refer the person—
- (a) in respect of whom the claim is made; or
- (b) whose entitlement is at issue,
- to a medical practitioner for such examination and report as appears to the Secretary of State to be necessary for the purpose of providing him with information for use in making the decision”.
34. In this case, the public authority has opted to enter into an agreement with the contractor for the provision of medical examination services connected with determining benefits. Nevertheless, the duty to make a decision in respect of disability working allowance and where necessary to seek a medical opinion in order to make such a decision rests with the Secretary of State.
35. In view of the above, the Commissioner has concluded that where the contractor is contractually obliged to provide information to the public authority upon request and/or where information is created as a result of the contractor carrying out functions conferred upon the public authority, that information is held on behalf of the public authority by virtue of section 3(2)(b). He notes that such information may also be held by the contractor in its own right as an employer. He is further

satisfied that the information which is the subject of this request would, if it were held by the contractor, be held on behalf of the public authority. This is on the basis that the contractor is obliged to record information about complaints against doctors and to supply this to the public authority on request. In addition it is also required to assist the public authority in responding to requests made under the Act.

Duty to confirm or deny whether information is held

36. The public authority cited section 40 of the Act as the reason for not disclosing the information requested. Section 40 of the Act is detailed within the legal annex. It states that information that constitutes third party personal data is exempt from disclosure if releasing that information would breach any of the data protection principles in Schedule 1 of the Data Protection Act 1998 (DPA).
37. For the sake of clarity, the Commissioner understands that the public authority and Atos Healthcare do not actively record the fact that a doctor has no complaints against him or her. Therefore the effect of denying the existence of information would be to reveal that a particular doctor had not been the subject of a complaint or complaints. Similarly, if the public authority were to confirm that information was held this would confirm that complaints had been received about a particular doctor.
38. Subsection (5) of section 40 of the Act states that the duty imposed by section 1(1)(a) to confirm or deny whether information is held does not arise if to do so would in itself contravene any of the data protection principles.
39. In this case the Commissioner must consider if confirming whether the doctor in question has been the subject of complaints would breach the first data protection principle. The Commissioner would normally address this point first and only go on to address the second part of the request about the number of complaints in the event that he concluded that the public authority should confirm or deny the existence of information.
40. However the Commissioner has stated his position on the number of complaints against doctors in previous cases. In addition to the two cases mentioned above (FS50064698 and FS50141015), the Commissioner was asked to make a decision about the handling of a similar request to the General Medical Council (reference FS50144027). In view of this, the Commissioner has included his analysis of the second aspect of the request in this decision. The decision outlined below will be similar to the outcome of the aforementioned case, although it will reflect the fact that the request in this case was made to a different public authority.
41. In order to rely on section 40, the information requested must constitute personal data. The Commissioner has therefore considered whether the requested information constitutes personal data of the doctor. To establish this, section 1(1) of the DPA, which contains the definition of personal data, has been considered. Section 1(1) of the DPA provides the definition of personal data

which is data that relates to a living individual and from which that person can be identified.

42. The Commissioner finds that the number of complaints received about a doctor would constitute his or her personal data if it were held. Further, he is also satisfied that confirming whether or not any complaints had been made about a doctor would constitute significant and biographical information about that living individual.
43. The Commissioner has therefore gone on to consider whether confirmation or denial of the existence of information and provision of numbers of complaints would breach the DPA, in particular the first principle which provides that processing must be fair and lawful. This is examined in detail below.
44. Having considered the evidence, the Commissioner believes that it is possible to separate the number of complaints from the details of any complaints received. He also notes that details of complaints have not been requested in this case. In considering this point, the Commissioner has taken into account the wide range of complaints that may be received and the information that is already in the public domain as regards doctors.
45. Currently only certain information about doctors is placed into the public domain by the General Medical Council. This information is listed as being a doctor's name, medical qualification and date of registration, with a recent change meaning that the number of public domain complaints and their outcomes are also now publicly accessible. This implicitly creates an expectation that other information held by the General Medical Council, such as complaints which are closed before they reach a public hearing, will be treated as confidential.
46. The Commissioner is aware that some serious complaints may be referred by Atos Healthcare to the General Medical Council. Where the General Medical Council holds information that may have originated from Atos Healthcare, he is satisfied that the expectations as mentioned in the previous paragraph would apply. In other words if the General Medical Council were to investigate a complaint against a doctor which arose from work being carried out for Atos Healthcare and it were to receive a request for information about such complaints, then it would be reasonable for that doctor to expect that material to be disclosed if it were considered at a public hearing.
47. However in this case he has had to consider the reasonable expectations of doctors employed by Atos Healthcare in terms of what it or the public authority is likely to make public about their complaints histories. The Commissioner understands that neither the public authority nor Atos Healthcare make complaints information specific to individual doctors available in the public domain. He is not aware that doctors are given an explicit undertaking that such information will not be released, however it has to date been the public authority and Atos Healthcare's practice not to do so. In this case the Commissioner considers that this practice is appropriate and given the nature of the material and the damage and distress that would be likely to arise if it were disclosed, he considers that doctors would have a reasonable expectation that the information

would not be released. He has concluded that doctors employed by Atos Healthcare would reasonably expect that the number of complaints and details may be provided by Atos to the public authority or to those reviewing complaints but that it would not be disclosed to the wider public.

48. The Commissioner has also considered whether those doctors would reasonably expect the public authority to confirm whether they had in fact been the subject of complaints. He notes that it may not, in theory, be unfair to disclose the fact that a particular doctor has not been the subject of a complaint as such information is not likely to result in that individual suffering any damage or distress. Therefore it is unlikely in itself to be unfair to deny holding complaints information. However, if where this was the case, an applicant was advised accordingly, then by implication when a refusal to confirm or deny was provided, the applicant would be able to infer that in fact complaints had been made about that doctor without any further context. Therefore, the Commissioner is satisfied that doctors would reasonable expect that the public authority would not in fact confirm whether or not such information is held.
49. In his previous decisions the Commissioner considered whether disclosing the number of complaints received would be unfair. The deliberations considered whether the situation involving a doctor's complaint history is analogous to other statistical information which has been released into the public domain.
50. In particular, the Commissioner has studied whether the number of complaints received against a physician is similar to the mortality rates for surgeons, details of which are published in some circumstances. Having studied the publication of such statistics, the Commissioner is aware that the relevant public authorities provide some context when disclosing this information. For example, an explanation of the reasons for a high mortality rate could be provided where a surgeon works with a high risk group, such as the elderly or infants. These mitigating circumstances allow the public to develop a much clearer picture of the situation rather than assuming that a particularly high mortality rate means that a surgeon or hospital is underperforming. Further, given that it is fair to release mortality rates for surgeons because such information can be contextualised, it is also possible to confirm that such information is held.
51. Having investigated some possible comparisons with other potentially similar types of statistical information, the Commissioner is not satisfied that the requested information can be categorised in the same manner. While there are some similarities between a surgeon's mortality rates and the numbers of complaints received by a doctor, the statistics do not cover identical fields.
52. On the one hand, mortality rates are essentially factual and can be contextualised relatively easily. On the other hand, complaints about doctors are not necessarily grounded in fact and could therefore be malicious or vexatious. There could also, for example, be multiple complaints about the same issue. Providing the number of complaints received by a particular doctor could therefore provide a misleading impression of the doctor without any context. Similarly, the Commissioner also considers that confirming or denying whether complaints exist without further context could provide a misleading picture. It may lead applicants to assume that

where information is held this reflects a doctor's competence or otherwise when in fact, as mentioned previously, only malicious complaints may be held.

53. Having established this, the Commissioner has gone on to consider whether it would be possible to provide an appropriate context for the information in this case. In doing so, he is mindful that, in contrast to the cases against the General Medical Council, in this instance any complaints that may be held would be generated in the context of assessments about Disability Living Allowance. Therefore, it may be possible to argue that because this is one limited area it is easier to contextualise the information. However, the Commissioner is not persuaded by this argument.
54. Although the complaints would be limited to those arising as a result of assessments of eligibility for Disability Living Allowance, the actual nature of any complaints could still be very different and may include the way in which an assessment was handled, general conduct or the recommendation made. In addition, the number of complaints may be affected by other factors such as the number of claimants assessed by different doctors. The Commissioner also recognises that some of the doctors employed by Atos Healthcare also work in separate areas beyond the contract such as general practice. He accepts that if the public authority were to release the number of complaints in this context, even though it would not reflect complaints as wide ranging as those dealt with by the General Medical Council, it could nevertheless negatively impact upon their professional lives.
55. The Commissioner has concluded that it would still be extremely difficult to provide any kind of context for the information without revealing the nature of any complaints that may be held. Having already decided that disclosure of the details of complaints would breach the first principle, the Commissioner could not accept this as a potential solution.
56. He has considered whether it would be possible to provide some sort of generic context, detailing the types of complaints that may be investigated and providing reasons why individual doctors might have complaints against them. However, providing such details when disclosing the number of complaints would be entirely artificial as it would not be providing a suitably accurate context. In other words, any explanation would, by the nature of the anonymising process, be largely hypothetical and not always based on the facts of the matter. Such conjecture would not provide a useful, factual basis for patients to assess the competence of a doctor and, in considering the potential consequences for the doctors of any such disclosure, the Commissioner does not believe that it would be fair.
57. The Commissioner considers that the argument above also applies simply to confirming or denying whether a doctor has in fact been the subject of a complaint. It would be impossible to sufficiently contextualise why some doctors have been the subject of complaints and others have not and why this does not necessarily accurately reflect their competence without providing details of the number of complaints received and the nature of those complaints.

58. While there is a legitimate public interest in making sure that the public are protected from any malpractice by doctors, the Commissioner does not believe that the first principle rights of the doctors should be breached in order to make available information which would not particularly assist the public in assessing their competence. There are clear mechanisms in place to monitor doctors performance and assist the public should they wish to complain about a doctor or if they are subject to an adverse decision in relation to their disability living allowance. Further, in this case the Commissioner is not aware of any evidence to suggest that these procedures have not been followed which may otherwise affect the decision in terms of fairness.
59. These mechanisms include random quality auditing or targeted auditing which could be triggered by a complaint or other factors. Persistent failure to meet a satisfactory standard by a doctor despite remedial action by the public authority and/or its agency results in revocation of approval to carry out assessments.
60. There is a two tier complaints procedure in place. Should a member of the public feel that the public authority/agency has not handled their complaint satisfactorily, they have the opportunity of an independent review by a firm that has no connection to the public authority or its agency.
61. Should a member of the public wish to appeal a decision made by the public authority in relation to their benefit entitlement, they have the option of appeal to a Tribunal.
62. Taking into account all of the above, the Commissioner is satisfied that it would breach the first principle of the DPA not only to disclose the number of any complaints that may be held about the doctor but also simply to confirm or deny whether complaints information about the doctor in question is held.

The Decision

63. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

Section 40(5)

To confirm or deny whether the information requested is held would have the effect of disclosing the personal data of a third party which would breach the first data protection principle.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

Section 17

Section 3

The refusal notice did not comply with all the requirements of section 17 of the Act and the public authority's assertion that it did not hold the requested information or that it was not held by the agency on its behalf was incorrect.

Steps Required

64. The Commissioner requires no steps to be taken.

Right of Appeal

65. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 18th day of December 2007

Signed

**Jane Durkin
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

General Right of Access

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Public Authorities

Section 3(2) provides that –

“For the purposes of this Act, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person,
or
- (b) it is held by another person on behalf of the authority.”

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Personal information

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –
“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the

exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –
In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

Data Protection Act 1998

SCHEDULE 1

The data protection principles

Part I

The principles

- 1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
- 2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
- 3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
- 4 Personal data shall be accurate and, where necessary, kept up to date.
- 5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- 6 Personal data shall be processed in accordance with the rights of data subjects under this Act.
- 7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.