

[Ref. ENF0530134]

ICO Ref: **ENF0530134**

DATA PROTECTION ACT 1998

UNDERTAKING

Data controller: Disclosure & Barring Service
PO Box 110
Liverpool
L69 3JD

I, Adrienne Kelbie, Chief Executive, for and on behalf of the Disclosure & Barring Service hereby acknowledge the details set out below and undertake to comply with the terms of the following Undertaking:

1. The Disclosure & Barring Service is the data controller as defined in section 1(1) of the Data Protection Act 1998 (the 'Act'), in respect of the processing of personal data carried out by the Disclosure & Barring Service and is referred to in this Undertaking as the 'data controller'. Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in respect of which he is the data controller.
2. The Information Commissioner (the 'Commissioner') has considered two requests for assessment made on behalf of individuals under section 42 of the Act. The requests for assessment concern question e55 of an application form used by the data controller which has not been amended since relevant legislation¹ came into force on 29 May 2013.
3. Question e55 of the application form asked the individuals 'Have you ever been convicted of a criminal offence or received a caution, reprimand or warning?' They responded positively to this question

¹ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment)(England and Wales) Order 2013 and the Police Act 1997 (Criminal Record Certificates: Relevant Matters)(Amendment)(England and Wales) Order 2013

even though it was old and minor caution/conviction information that would have been filtered under the legislation¹. The individual's positive response to question e55 was then seen by prospective employers who withdrew their job offers.

4. The Commissioner has considered the data controller's compliance with the provisions of the Act in the light of this matter. The relevant provision of the Act is the First Data Protection Principle.
5. The First Data Protection Principle provides, at Part I of Schedule 1 to the Act, that:

"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."*

Sensitive personal data is defined in section 2 of the Act.

6. The Commissioner is satisfied that in respect of the individuals referred to in paragraph 2 above, the data controller has contravened the First Data Protection Principle in that the existence of conviction/caution information (sensitive personal data) has been unfairly disclosed to prospective employers as a result of their response to question e55 as currently drafted.
7. It has been agreed that, in consideration of the Commissioner not serving an Enforcement Notice under section 40 of the Act in respect of the contravention referred to above, the data controller undertakes as follows:

The data controller shall, as from the date of the Undertaking and for so long as similar standards are required by the Act or other successor legislation, ensure that personal data are processed in accordance with the First Data Protection Principle at Part I of Schedule 1 to the Act, and in particular that:

(1) By 31 March 2014, question e55 of the application form

is amended to 'Do you have any convictions, cautions, reprimands or final warnings, which would not be filtered in line with guidance?' and;

(2) By 31 July 2014, the application form includes an insert or addendum which provides information to applicants on the matters that will be filtered and so can be withheld in any response to the amended question e55;

(3) With immediate effect, the supporting information provided to applicants, and also to employers or other registered bodies who may have access to the application form or disclosure certificate, is kept under review to ensure that they continue to receive up to date, accurate and relevant guidance in relation to filtered matters.

Signed:

Adrienne Kelbie

Chief Executive

Dated:

Signed:

Stephen Eckersley

Head of Enforcement

For and on behalf of the Information Commissioner

Dated: