



CHARLES RUSSELL

Direct Marketing

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Data Protection Direct Marketing Law

- ◆ Data Protection Act 1998
- ◆ Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426)
 - ◆ as amended by Privacy and Electronic Communications (EC Directive)(Amendment) Regulations 2004 (SI 2004/1039)
- ◆ *Durant -v- Financial Services Authority* [2003]



Data Protection Principles - Summary

- ◆ Process fairly and lawfully
- ◆ Obtain data only for one or more specified purposes
- ◆ Data adequate relevant and not excessive
- ◆ Data accurate and kept up to date
- ◆ Data not to keep longer than necessary
- ◆ Process in accordance with rights of data subject
- ◆ Take security measures
- ◆ No transfer of data outside EEA without adequate protection



First Principle

- ◆ Personal data must be processed fairly and lawfully and one of the conditions...must be met
 - ◆ Fair processing only if data controller is identified to data subject, together with identity of any data protection representative, and purpose(s) for which data are intended to be processed is stated
 - ◆ Conditions at Schedule 2 or 3 to DPA 1998



First Principle

- ◆ Consent to processing is most used condition (explicit consent for sensitive personal data)
- ◆ Can process personal data without consent in certain circumstances e.g.:
 - ◆ Paragraph 6 of Schedule 2: “The processing is necessary for the purposes of legitimate interests pursued by the data controller or by third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”



Second Principle

- ◆ Personal data can only be obtained for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose or purposes for which they are processed



Sixth Principle

- ◆ Personal data shall be processed in accordance with the rights of the data subject
 - ◆ Principle breached if:
 - ◆ Subject access request not met
 - ◆ Damaging or distressing processing continued after request to stop
 - ◆ Direct marketing continued after request to stop
 - ◆ Automatic decision making continued after request to stop



Rights of Data Subjects

- ◆ Right to prevent processing for purposes of direct marketing
- ◆ Section 11 DPA 1998:
 - ◆ right at any time by notice in writing to a data controller to require the data controller to cease, or not to begin, processing for the purposes of direct marketing
 - ◆ if not carried out, data subject can apply for court order



Fair Processing Notices

- ◆ Also known as fair collection notices
- ◆ Can include obtaining consent for third parties/trading arm of collecting data controller
- ◆ Obtaining data from third parties
 - ◆ “made readily available”
 - ◆ “at the relevant time”
 - ◆ “would involve a disproportionate effort”
- ◆ Opt-in and opt-out consents



Opt-in and Opt-out Consents

- ◆ “Opt-out” for section 11
 - ◆ best practice to include at first opportunity
 - ◆ covers surface mail
- ◆ Direct Marketing Association Codes of Practice
 - ◆ “with minimum effort” (para 5.21(b))
- ◆ “Opt-in” for electronic marketing after 11 December 2003
- ◆ No “opt out/in” for objectors’ lists



Marketing Lists - Email

- ◆ Strictly all electronic communications
- ◆ Privacy Regulations “opt-in”
- ◆ “Individual subscriber”
 - ◆ email campaigns to companies
 - ◆ use of non-personal email addresses
- ◆ Unsubscribe obligation
- ◆ “Soft” opt-in
 - ◆ existing customer relationship
 - ◆ similar goods or services



Marketing Lists – Phone/Fax/Mail

- ◆ Telephone Preference Service
 - ◆ corporate subscribers can register from 25 June 2004
- ◆ Fax Preference Service
- ◆ Mail
 - ◆ No obligation to “clean” lists
 - ◆ Direct Marketing Association Code of Practice



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