



23 June 2014

Bilal Toure
Domestic Data Protection Policy
Ministry of Justice

By email: informationrightsBOC@justice.gsi.gov.uk

Dear Bilal Toure

Ministry of Justice – Balance of Competence Review – Information Rights

Thank you for the opportunity to respond to the above consultation.

As you will be aware, CIFAS is a not for profit association which helps over 300 organisations prevent and detect fraud. Spanning the public and private sectors, CIFAS' associated organisations share confirmed fraud data in order to stop fraudsters in their tracks and to protect the economy from fraud losses. In the last year alone, we helped our members prevent £1bn in fraud losses. In addition, we offer a protective registration service to citizens whose identities are at particular risk.

CIFAS has considerable experience in protecting organisations from fraudsters - sharing confirmed fraud data and effectively ensuring that once a fraudster is identified by one organisation it is very difficult for them to attack another. This data is then reported to the National Fraud Intelligence Bureau, allowing the UK's law enforcement agencies to identify and prosecute serial fraudsters.

CIFAS also maintains an Internal Fraud Database which enables responsible employers to record proven cases of internal fraud, bribery and corruption in order to prevent the perpetrator moving unchallenged to a new employer to commit similar activities.

CIFAS has been in existence for over 25 years and has always consulted (and still consults) the data protection authorities (now the Information Commissioner's Office) when any change to its regime is being contemplated. We work hard to ensure that the rights of consumers are upheld, and use our website to communicate how these rights can be exercised.

Questions

1. What evidence is there that the EU's competence and the way it has used it (principally the Data Protection Directive) has been advantageous or disadvantageous to individuals, business, the public sector or any other groups in the UK?

The Data Protection Directive, as implemented in the UK, now works well to balance the rights of individuals with those of organisations.

2. What evidence is there that the EU's competence and the way it has used it (principally the Data Protection Directive) strikes the right balance between individuals' data protection rights and the pursuit of economic growth?

The interpretation and implementation of the Data Protection Directive have varied across European Member States. This has militated against a single market, therefore making it difficult – and/or more costly – for UK businesses to trade across borders in Europe.

So far as fraud prevention is concerned, the different interpretation of the Directive by other European Member States has also meant that fraud data sharing for fraud prevention (which has operated legitimately in the UK for over 25 years, saving £billions) has not been embraced more widely. Organisations in other Member States are therefore frustrated that they are unable to prevent fraud more effectively, damaging their countries' economic growth.

3. What evidence is there that the EU's competence and the way it has used it (principally the Data Protection Directive) is meeting the challenges posed by the increasing international flow of data, technological developments, and the growth of online commerce and social networks?

There are concerns that legislation has not kept pace with developments, but the pace of change is such that it is difficult to see how any legislation could be future-proofed in this respect.

4. What evidence is there that proposals for a new EU Data Protection Regulation will be advantageous or disadvantageous to individuals, business, the public sector or any other groups in the UK?

In relation to fraud prevention in the UK, there are particular concerns surrounding the drafting of Articles 6, Article 9(2) and Article 13 of the Regulation. It will be important to ensure that the legitimate systems and schemes that are already in place for fraud prevention in the UK are not undermined by any new provisions. CIFAS would be happy to provide further information if required.

5. What evidence is there that the right to access documents of the EU institutions has been advantageous or disadvantageous to individuals, business, the public sector or any other groups in the UK?

We will leave this question to others who are more closely affected.

6. How would UK citizens' ability to access official information benefit from more or less EU action?

We will leave this question to others who are more closely affected.

7. How could action, in respect of information rights, be taken differently at national, regional or international level and what would be the advantages and disadvantages to the UK?

There seems to be little or no need for change to the current regime within the UK as the evidence is that it works well.

8. Is there any evidence of information rights being used indirectly to expand the competence of the EU? If so, is this advantageous or disadvantageous to individuals, business, the public sector or any other groups in the UK?

At present, Member States' governments have some latitude to interpret the Directive at national level. While this might preclude a level playing field across Europe, it does keep a modicum of control within Member States. A tightly drafted Regulation, with no room for manoeuvre, will place that control more firmly at the heart of the EU.

9. What is the impact on EU competence of creating an entirely new legal base for making data protection legislation that is not expressly linked to the EU's single market objectives?

We will leave this question to others.

10. What future challenges or opportunities in respect of Information Rights might be relevant at a UK, EU or international level; for example cloud computing?

We will leave this question to others, but the need to match regulation to the rapid pace of change – which has been identified within the document – is clearly a particular challenge.

11. Is there any other evidence in the field of EU Information Rights that is relevant to this review?

We will leave this question to others.

We hope that the above response is useful. If you require any further information, please contact me on member.services@cifas.org.uk.

Yours sincerely



Simon Fell
Public Affairs Manager
CIFAS

