



Department  
for Business  
Innovation & Skills

## PERSONAL DATA

Summary of existing regulations,  
guidance and redress covering  
personal data

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# Summary of existing regulations, guidance and redress covering personal data

1. One of the recommendations from the midata Consumer Protection and Trust working groups was that the Government should signpost existing relevant legislation and guidance relating to the use of personal data, as well as the existing redress schemes available to consumers who have a complaint in relation to the handling of their personal data.
2. This recommendation was made in recognition of the fact that existing data protection legislation and related guidance applies to midata transactions just as it does to all other personal data sharing transactions. Indeed, so far as their security is concerned, midata transactions are largely indistinguishable from other personal data transactions and so existing advices and redress schemes would cover any consumer complaints that might emerge in this area.
3. The table below summarises the main pieces of legislation that cover transactions relating to personal data:

Legislation	Detail	Regulator
<p>Data Protection Act (DPA) 1998</p>	<p>The DPA sets out <b>eight data protection principles</b>, so that personal information is:</p> <ol style="list-style-type: none"> <li>1. Fairly and lawfully processed</li> <li>2. Processed for limited purposes</li> <li>3. Adequate, relevant and not excessive</li> <li>4. Accurate and up to date</li> <li>5. Not kept for longer than is necessary</li> <li>6. Processed in line with the rights of individuals</li> <li>7. Secure</li> <li>8. Not transferred to other countries (outside European Economic Area) without adequate protections in place.</li> </ol> <p>A full list of the guidance relating to data protection and privacy and electronic communications for organisations can be found on the ICO's website:</p> <p><a href="http://ico.org.uk/for_organisations/guidance_index/data_protection_and_privacy_and_electronic_communications">http://ico.org.uk/for_organisations/guidance_index/data_protection_and_privacy_and_electronic_communications</a></p>	<p>Information Commissioner's Office (ICO)</p>
<p>Privacy and Electronic Communications (EC Directive) Regulations 2003</p>	<p>This Directive makes it unlawful to send direct marketing electronically to someone who has not specifically granted permission (via an opt-in agreement) unless there is a previous relationship between the parties.</p> <p>Organisations cannot merely add people's details to their marketing database and offer an opt-out after they have started sending direct marketing.</p> <p>These regulations can be enforced by ICO against the offending company anywhere in the EU.</p>	<p>Information Commissioner's Office (ICO)</p>

Legislation	Detail	Regulator
Computer Misuse Act 1990	<p>Makes hacking unlawful and identified perpetrators can be prosecuted under the legislation. The Act prohibits:</p> <ul style="list-style-type: none"> <li>• Unauthorised access to computer material</li> <li>• Unauthorised access with intent to commit or facilitate commission of further offences</li> <li>• Unauthorised modification of computer material.</li> </ul>	Ministry of Justice

4. In addition the Information Commissioner's Office has published guidance relating to the application of the Data Protection Act to apps accessed through smart phones and tablets for use by developers. This guidance can be accessed here: [http://ico.org.uk/news/latest\\_news/2013/~media/documents/library/Data\\_Protection/Detailed\\_specialist\\_guides/privacy-in-mobile-apps-dp-guidance.pdf](http://ico.org.uk/news/latest_news/2013/~media/documents/library/Data_Protection/Detailed_specialist_guides/privacy-in-mobile-apps-dp-guidance.pdf)
5. Further information on the scope of the DPA and the role and functions of the ICO can be found at: <http://www.ico.org.uk>

## Sources of help for consumers when things go wrong

6. Consumers, who believe that their personal data has been handled in a way that is contrary to the rules set out in the DPA / Privacy and Electronic Communications Regulations should, in the first instance, draw the issue to the attention of the supplier who they have an issue with and see what remedy they offer. If the matter is not resolved to the consumers' satisfaction, they may pursue further action through the relevant regulator.

## Making a complaint to the ICO

7. The ICO can require compliance by data holders with data protection regulations; and impose fines for non-compliance. However, the ICO is not empowered to seek or award redress on an individual's behalf.
8. Complaints to the ICO must be made in writing and pro-formas and advice about making a complaint is given on their website. For general advice, for example in considering making a complaint, the ICO's advice line on 0303 1231113 will help. More information on the complaints process can be found on the ICO website.

## Making a complaint to the relevant sectoral regulator / ombudsman

9. Where a sectoral regulator receives either a single complaint or pattern of complaints related solely to data protection, the ICO would expect the matter to be referred to them for consideration under their DPA powers.
10. But where a data protection issue is part of a wider consumer complaint, the sectoral regulator has jurisdiction to consider the data protection elements as part of its overall investigation and remedy. The sectoral regulators are:
  - Ofgem for energy supplier related complaints
  - Ofcom for telecommunications related complaints
  - Financial Ombudsman Service for complaints about financial services /institutions (overseen by the Financial Conduct Authority)
11. The websites of each sector regulator, or ombudsman, detail their full complaints procedure for consumers who have a complaint but for ease of reference we have summarised the broad process for each regulator below.

### Ofgem

12. Energy companies have set a time limit of eight weeks to deal with any complaints. If the energy company hasn't settled a complaint after eight weeks, consumers can contact the Energy Ombudsman.
13. The Ombudsman will look into complaints and can award customers compensation. This includes small businesses, as well as domestic customers. Using the Ombudsman is free. Energy companies have to pay for every case that gets to this stage.

### Ofcom

14. For a complaint about the service a consumer receives from a telecoms company the first contact is the company in question. Ofcom stipulate that full details of the complaints process should be made available in the company's code of practice on complaints handling.
15. If the problem is not resolved within eight weeks the complaint can be submitted to an independent Alternative Dispute Resolution Scheme (ADR). Consumers are recommended to ask the supplier for a 'deadlock' letter to facilitate consumers' referral of disputes to the relevant scheme.

16. At present, Ofcom has approved two ADR schemes – CISAS and Ombudsman Services: Communications. The phone company will tell you which scheme it belongs to or you can use Ofcom's ADR checker.
17. Ofcom does not investigate individual consumer complaints. The information individuals provide them is used to identify trends and can lead to investigation of a particular company's behaviour.

## Financial Ombudsman Service

18. The Financial Ombudsman fields complaints if the supplier has not resolved the complaint within eight weeks of the complaint being referred to them and has power to award compensation to the consumer, where justified.

## Vulnerable consumers

19. Vulnerable customers (such as those with a limited income or who are unable to deal with an energy complaint due to their personal circumstances), or those who have a complex complaint and need extra assistance, can be referred to the Extra Help Unit by the Citizens Advice Consumer Service.
20. The Extra Help Unit has a team of specialist case workers who will investigate an issue and negotiate a resolution on behalf of a consumer.

## Taking the case to court

21. Individual consumers have the right to take their data protection (or any other) complaint to court as a civil matter, to either a small claims or county court to require the provision of information or to seek compensation. Should this situation arise in relation to a midata dispute, the first step could be to contact the ICO Helpline on 0303 123 1113.

## Cabinet Office Identification Assurance Programme

22. The Identification Assurance Programme is run by the Cabinet Office's Government Digital Service (GDS) team.<sup>1</sup> The GDS is leading the digital transformation of Government and works in three core areas:
  - transforming 25 high volume key public services from across government into digital services- three examples include a fully digital passport application service, tax disc renewal service and PAYE self-assessment service

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<sup>1</sup> <https://www.gov.uk/government/policy-teams/government-digital-service>

- building and maintaining the consolidated GOV.UK website – which brings government services together in one place
- changing the way government procures IT services.

23. As part of delivering the first priority of transforming 25 key public services that citizens have the most interaction with into digital services GDS has led a work stream on ID Assurance. This work stream has looked in depth at ways to ensure the safe verification of individual's identification- so that when citizens access online public services the Government can be sure that that person is who they say they are.

24. As part of this work the GDS have been working with their Privacy and Consumer Advisory Group to help make sure that the digital services that are designed are based on user choice, control and privacy. As a first step the Advisory Group published a set of identity assurance principles. These are designed to make sure that any digital public service using, storing or giving access to a citizen's personal data operates in a way that is transparent, protects their privacy and gives control over how their data is used.

25. Although these principles are designed with digital public services in mind the Personal Identification Assurance working group nevertheless believed that they contained useful principles relevant to midata transactions. They can be found at:

<https://www.gov.uk/government/consultations/draft-identity-assurance-principles/privacy-and-consumer-advisory-group-draft-identity-assurance-principles>

The GDS is due to publish their response to these draft principles by summer 2014.



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