



The knowing or reckless misuse of personal data – introducing custodial sentences

1. The Office of the Immigration Services Commissioner (OISC) was established by the Immigration and Asylum Act 1999 (the Act) to regulate those persons that provide immigration advice and/or services as defined by the Act. Section 93 (2) of the Act prohibits the disclosure of information by those working for, or on behalf of, the Commissioner without lawful authority. Anyone that knowingly or recklessly discloses information in contravention of this subsection is guilty of an offence.
2. The Commissioner welcomes the opportunity to comment on this consultation, and generally supports the consultation's proposals. We agree with the central proposition that public trust in the processes for managing and securing data is essential. She would, however, like to have clarification on the matter explained below.
3. The Commissioner is a corporation sole (Sch. 5 Part II para 11 (1)). All activities undertaken by her staff or agents are undertaken in her name. She holds and collects sensitive personal data under her statutory duty to, in part, ensure that those who provide immigration advice and services are fit and competent to do so (s.83 (5)(a)). This brings accompanying difficulties if an OISC member of staff "goes off on a frolic of their own". The Commissioner wishes to establish clearly the extent of the OISC's corporate responsibility in such circumstances.
4. The OISC has established policies and procedures to ensure that this does not happen, and, under s.93 of the Act, it is a criminal offence for the Commissioner, her staff or any agent she may use to knowingly or recklessly disclose without lawful authority relevant personal data that has been obtained for the purposes of the Act. This offence is punishable by a fine.
5. In light of the above paragraph, there is concern that there is not an explicit defence of due diligence. It is inequitable for the Commissioner to be



personally liable to the possibility of a fine or imprisonment if a member of her staff or an agent, even after due diligence has been exercised, knowingly or recklessly breaches s.55 of the Data Protection Act.

6. There is also the more general danger that these proposals may make data controllers such as those working at the OISC more risk averse. The OISC also supports the ethos of the Freedom of Information Act 2000, which contains a presumption for disclosure. Given the more severe sentences in these proposals, it is probable that those being asked for information may be more unwilling to disclose.
7. Given the OISC's responsibilities, the proposals, if we have understood them correctly, may result in the OISC requiring obtaining more legal advice than it does now, which will impact on our costs. We note that this consideration has not been included in the Impact Assessment.

A handwritten signature in black ink, which appears to read 'Suzanne McCarthy'.

Suzanne McCarthy
Immigration Services Commissioner
6 January 2010