

# Bird & Bird & data protection update

*September 2013*

*We are enclosing our latest data protection update of news and developments over September.*

Key points to note are as follows:

- Bird & Bird summary of the new direct marketing guidance from the ICO
- Highlights from the 35th International Conference of Data Protection and Privacy Commissioners
- The OECD releases revised Privacy Guidelines



**Ruth Boardman**

Partner

[ruth.boardman@twobirds.com](mailto:ruth.boardman@twobirds.com)

Title	Description
UK	

---

### Information Commissioner's Office (ICO)

---

**06 September 2013**

**ICO launches guidance on direct marketing**

The ICO released its guidance on direct marketing in accordance with the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR).

In many areas, the Guide collects and restates earlier guidance. In a few places, the guide does take a different approach - in particular on whether consent is required for sharing information for marketing purposes and whether an organisation can make a service 'conditional' on an individual accepting direct marketing.

**Please find the Bird & Bird summary of the guidance [here](#).**

**The ICO guidance can be accessed in full [here](#).**

**The ICO has also published a direct marketing compliance checklist for organisations, which can be found [here](#).**

---

---

**Other**

---

---

**12 September 2013**

**Department of Health releases review on information sharing in the healthcare sector**

On 12 September 2013, the Department of Health published the government's response to the Caldicott review on information sharing in the healthcare sector

The stated ambitions of the government's response are that members of the public should:

- Feel confident that information about their health and care is secure, protected and shared appropriately when that is in their interest.
- Be better informed about how their information is used and shared while they are receiving care, including how it could be used in anonymised form for research, for public health and to create better services.
- Know how to object if they do not want their information to be shared.
- Be increasingly able to access their own health and care records.

The first step in achieving these ambitions was the publication by the Health and Social Care Information Centre of a guide to confidentiality in health and social care alongside the government's response. The guide sets out five high level confidentiality rules that should be observed by staff with access to confidential information and is accompanied by a reference guide which provides more detailed information for organisations and examples of good practice.

The government's response accepts all the recommendations of the review. The government acknowledges the importance of information sharing in delivering the highest standards of care possible. However, it states that it is important that only the minimum amount of information is shared and that there are strict rules to govern it.

**The Government response to the Caldicott review can be found [here](#).**

**The Health and Social Care Information Centre publications on the use of confidential information can be found [here](#).**

---

**16 September 2013**

**Law Commission publishes consultation paper on data sharing between public bodies**

---

---

Following the launch of the "Data Sharing between Public Bodies" project earlier this year, the Law Commission has published a consultation paper focussing on the following:

- Is there a problem with the law - does the law itself erect barriers that unduly restrict data sharing between public bodies?
- Is the law too complex and hard to understand - has a lack of clarity in the law led public bodies to develop cultures that prevent lawful data sharing? Is data sharing just too difficult?
- Is there a gap in education, guidance and advice?

The project aims to establish whether these perceived obstacles are embedded in practice or culture, or whether they are to do with the substance of the law or how it is written.

The consultation is open up to 16 December 2013, with a follow-up report due in Spring 2014.

**More information on the Data Sharing between Public Bodies project can be found [here](#).**

**The consultation paper can be accessed [here](#)**

---

Title	Description
UK	

### Enforcement

---

**06 September 2013 – 27 September 2013:**

One prosecution case and one monetary penalty notice.

Following the busy enforcement period over the last few months, this month has two significant actions from the ICO.

One was the prosecution of an ex Barclays Bank employee over the illegal disclosure of personal data; and the other was a monetary penalty imposed upon a sole trader for the loss of unencrypted data.

**Please see the attached Enforcement Table for more details of the enforcement actions.**

---

Title	Description
Europe	

## 35<sup>th</sup> International Conference of Data Protection and Privacy Commissioners

25 September 2013

### International Conference of Data Protection and Privacy Commissioners, Warsaw

The Commissioners adopted a resolution to improve co-ordination between global data protection and privacy authorities, through the International Enforcement Co-ordination Working Group (IECWG).

The resolution, which was adopted unanimously, aimed to improve co-ordination across the different jurisdictions and sought:

- To mandate the IECWG to work with other networks to develop a common approach to cross border case handling and enforcement coordination, to be expressed in a multilateral framework document with a view to adoption at the 36th Conference in Mauritius in 2014. This approach will build on work already done by the conference and elsewhere, in particular to address the sharing of enforcement related information and will not interfere with other similar arrangements by other networks.
- To encourage privacy enforcement authorities to look for concrete opportunities to cooperate in particular investigations involving cross-border issues.
- To support the development of a secure information platform which offers a 'safe space' for privacy enforcement authorities to share confidential information and, to facilitate the initiation and conduct of coordinated enforcement action and, complement other international enforcement coordination mechanisms.

During the 35th International Conference of Data Protection and Privacy Commissioners, held in Warsaw, a new declaration, [the Warsaw Declaration](#), was signed, outlining the challenges data protection and privacy commissioners face from the rise in mobile applications (apps) and identifying possible solutions.

**The resolution can be found [here](#).**

**The Warsaw Declaration can be accessed [here](#).**

**A summary of the issues and agreed resolutions from the conference can be found [here](#)**

Topics include:

- "Appification" of society
- Profiling

- 
- Web-tracking
  - Enforcement co-ordination
- 

---

## Article 29 Working Party

---

**09 September 2013**

**A29 WP draft agenda for its 92<sup>nd</sup> meeting**

Draft agenda of the main topics include:

- State of play of the data protection reform
- Practical cooperation between DPAs
- International enforcement cooperation
- Draft opinion on `legitimate interests`
- Remotely Piloted Aircraft Systems (RPAS)
- PRISM and possible similar intelligence programs

**The meeting takes place in Brussels between 02-03 October 2013.**

---

---

## Other

---

**12 September 2013**

**OECD releases revised Privacy Guidelines which focussing on accountability and notification of breaches**

The Organisation for Economic Co-operation and Development released updated privacy guidelines, with an increased focus on implementation and enforcement as well as a new risk-management approach to accountability for companies and public organisations.

The guidelines replace and modernise the 33-year-old original guidelines while maintaining the 1980 version's goal of protecting privacy as a fundamental condition for cross-border data flows.

The guidelines take into account the "data-driven" nature of the modern economy and calls for national governments to make data privacy strategies a top priority, and for public organisations and companies to be more accountable for protecting privacy, for example, by implementing data breach notification procedures.

**The revised guidelines can be found [here](#).**

---

## Enforcement notices and undertakings

UK

Date	Entity	Enforcement notice, undertaking or monetary penalty?	Description	Summary of steps required (in addition to the usual steps*)
25 September 2013	Jennifer Addo (former Barclays Bank employee)	Prosecution	<p>A former Barclays Bank employee was fined after illegally accessing the details of a customer's account.</p> <p>The employee, Jennifer Addo passed on the account holder's personal information to the customer's former partner, who was a friend of the Ms Addo's.</p> <p>An investigation followed after the account holder reported the disclosure to Barclays; and it was discovered that Ms Addo had illegally accessed the customer's details on 22 occasions between 10 May 2011 and 8 August 2011. This was despite Barclays informing its staff that they should not access customers' accounts unless required.</p> <p>When interviewed by her employer, Addo confirmed that she was aware that the complainant's details should not have been accessed, but still decided to look at the complainant's file and pass information to her friend. Ms Addo failed to respond to the ICO's enquiries leading up to today's prosecution.</p> <p>Ms. Addo's employment was terminated once the investigation was underway.</p> <p>Following last month's similar incident in the case of a probation officer, this again raises the question of whether stricter penalties are required, as opposed to the current "fine only" approach.</p>	<b>Prosecution under section 55 of the Data Protection Act and a fine of £2,990 for 23 offences as well as a £120 victim surcharge and £250 prosecution costs.</b>



Date	Entity	Enforcement notice, undertaking or monetary penalty?	Description	Summary of steps required (in addition to the usual steps*)
<b>26 September 2013</b>	<b>Jala Transport Limited</b>	<b>Monetary Penalty</b>	<p>Jala Transport, a small money-lending business lost a hard drive containing financial details relating to all of their 250 customers.</p> <p>The stolen hard drive was password protected, but crucially not encrypted, and included details of the customers' name, date of birth, address, the identity documents used to support the loan application and details of the payments made.</p> <p>During its summary, the ICO recognised the fact that the loss could amount to substantial damage and distress; however, it took into account the limited financial resources of the business, as well as the fact that the data breach was voluntarily reported. The Monetary Penalty was therefore reduced from £70,000 to £5,000.</p> <p>Following this incident, the ICO reiterated the importance of encrypting data files for businesses of all sizes.</p>	<b>Monetary Penalty of £5,000.</b>

\*The usual steps required of an entity are to give undertakings that:

1. Staff are made aware of the data controller's data protection policy and procedures, and are adequately trained on how to follow these; and
2. The data controller shall implement such other security measures as it deems appropriate to ensure that personal data is protected against unauthorised and unlawful processing, accidental loss, destruction and/or damage.

This briefing gives general information only as at the date of first publication and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice, which should be obtained in specific circumstances.

# twobirds.com

[Abu Dhabi](#) & [Beijing](#) & [Bratislava](#) & [Brussels](#) & [Budapest](#) & [Copenhagen](#) & [Düsseldorf](#) & [Frankfurt](#) & [The Hague](#) & [Hamburg](#) & [Helsinki](#) & [Hong Kong](#) & [London](#) & [Lyon](#) & [Madrid](#) & [Milan](#)  
& [Munich](#) & [Paris](#) & [Prague](#) & [Rome](#) & [Shanghai](#) & [Singapore](#) & [Skanderborg](#) & [Stockholm](#) & [Warsaw](#)

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 15 Fetter Lane, London EC4A 1JP.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses and has offices in the locations listed on our web site: [twobirds.com](http://twobirds.com).

A list of members of Bird & Bird LLP, and of any non-members who are designated as partners and of their respective professional qualifications, is open to inspection at the above address.