

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE DATED 9 JANUARY 2008

To: The Carphone Warehouse Limited

Of: 1 Portal Way
London
W3 6RS

- 1 The Carphone Warehouse Limited, (CPW), is a “data controller” as defined in Section 1(1) of the Data Protection Act 1998 (the Act).
- 2 The Commissioner has considered written and verbal responses provided to him by the data controller regarding numerous complaints received by him from members of the public in relation to the following issues;
 - a) Subject access request - The failure to comply with subject access requests, having clearly received them as cheques were cashed and in certain instances further information was requested when it was not reasonably required.
 - b) Accuracy and Fairness - The setting up of accounts using incorrect details such as the name address and bank details, which in some instances had been obtained from old contract or purchase data, together with the refusal to amend inaccurate records without the permission of the account holder.
 - c) Security - The ability of customers to view confidential personal data of other customers when logging on to their online account and in some instances the emailing of such data to other customers.
 - d) Accuracy – The holding of inaccurate data and its disclosure to credit reference agencies or debt collection agencies and the failure to amend the data unless instructed to do so by the Commissioner.
- 3 The Commissioner has considered the responses provided to him on the issues arising from the incidents referred to in Paragraph 2 and has considered the data controller’s compliance with the provisions of the Act in light of this matter.
- 4 Section 4(4) of the Act provides that, subject to Section 27(1), it is the duty of a data controller to comply with the Data Protection Principles in relation to all personal data with respect to which he is the data controller. The relevant provisions of the Act are the First, Fourth, Sixth and Seventh Data Protection Principles, which state:

“1. Personal data shall be processed fairly and lawfully...”

4. Personal data shall be accurate and, where necessary, kept up to date.

6. Personal data shall be processed in accordance with the rights of data subjects under this Act.

7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of or damage to, personal data”.

Paragraph 1 (1) of Part II of Schedule 1 of the Act provides that:

“In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained...”

Paragraph 8 of Part II of Schedule 1 of the Act provides that:

*“ A person is to be regarded as contravening the sixth principle if, but only if –
(a) he contravenes section 7 by failing to supply the information in accordance with that section.”*

Paragraph 9 of Part II of Schedule 1 of the Act provides that:

*“Having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to
(a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle, and
(b) the nature of the data to be protected”*

- 5 Having considered the responses referred to in paragraph 2 above, the Commissioner takes the view that in this case in relation to each of the issues his position is as follows;
- a) CPW failed to comply with subject access requests
 - b) CPW unfairly and unlawfully processed data
 - c) CPW failed to take appropriate technical and organisational measures to ensure there was no unauthorised or unlawful processing
 - d) CPW processed inaccurate and/or out of date data
- 6 On 29 October 2007 the Commissioner served a Preliminary Enforcement Notice on CPW. This notice indicated that the Commissioner was minded to serve an Enforcement Notice requiring the data controller to take specified steps to comply with the First, Fourth, Sixth and Seventh data protection principles. Representations were received in the form of a letter dated 30 November 2007 from Tim Morris, Group Director of Legal Affairs and Company Secretary.
- 7 The Commissioner has considered, as he is required to do under Section 40(2) of the Act when deciding whether to serve an Enforcement Notice whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner takes the view that damage and distress has been caused as a result of CPW’s use of inaccurate and incorrect personal data and as a result of confidential personal data getting into the hands of unauthorised persons.

8 In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of his powers under section 40 of the Act, he requires that the data controller shall within 35 days of the date of this Notice:

Subject Access Requests

Ensure that all subject access requests received by the data controller are dealt with in compliance with the provisions contained within Section 7 of the Data Protection Act 1998. This should include the following:

- CPW must be able to demonstrate to the Commissioner's satisfaction that a process is in place whereby Subject Access Requests are fully responded to within 40 days irrespective of to whom the request is addressed within the company, and to which office, retail outlet, or other address it is sent or delivered
- CPW must ensure that records are held and maintained relating to such requests, their timescales, and the information provided
- CPW must provide all employees who are engaged in the process of dealing with such subject access requests with adequate and relevant training
- CPW must ensure that unjustified or unnecessary requests for further information from persons making Subject Access Requests are not made thereby delaying the disclosure process

Inaccuracies / Fairness

Ensure that the procedures in place for loading new customer account details are appropriately modified or corrected so as to ensure that new customer details entered onto the system are not incorrectly matched to details of existing or previous customers. This is so as to ensure that:

- CPW does not pass on inaccurate information to Credit Reference Agencies
- CPW does not pass on inaccurate information to Debt Collection agencies
- CPW does not incorrectly open accounts in the names of persons who have neither requested nor applied for a new account
- CPW does not open accounts using the bank details of a third party
- CPW does not open accounts using the address of a third party
- CPW does not disclose customer bank account details to other customers

CPW must introduce adequate and relevant training of staff so as to eliminate instances whereby staff incorrectly link accounts of new customers to accounts of existing or previous customers.

CPW must further introduce appropriate procedures and systems so that when inaccuracies relating to linked accounts are brought to the attention of the data controller the information can be corrected within a maximum of 21 days.

Email / Website security

Introduce appropriate technical measures so as to ensure:

- **that online customers cannot view other customers account details and other personal data in error, and**
- **that no personal data is sent on line to the e-mail address of anyone other than the data subject themselves**

CPW must also introduce appropriate procedures so as to ensure that when complaints concerning the insecurity of the e-mail system or website are brought to the attention of the data controller, they are urgently investigated and any breach is immediately contained.

Right of Appeal

There is a right of appeal against this Notice to the Information Tribunal. Information about appeals is set out in the attached Annex 1.

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Notice is served. If the notice of appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated the 9th day of January 2008

Signed:

David Smith
Deputy Information Commissioner
Wycliffe House
Water Lane
WILMSLOW
Cheshire
SK9 5AF