

## **FLA RESPONSE TO THE DCA CONSULTATION ON PENALTIES FOR MISUSE OF DATA**

FLA is the principal representative of the asset, consumer and motor finance sector in the UK. FLA members achieved £85.1 billion of new business in 2005. Of this, £57.9 billion was provided to the consumer sector, and FLA members represented 25.6% of all unsecured lending in the UK. The remaining £27.2 billion was provided to the business sector and UK public services.

Our members comprise banks, subsidiaries of banks and building societies, the finance arms of leading retailers and manufacturing companies, and a range of independent firms. The facilities they provide include secured and unsecured personal loans, credit cards and store card facilities, leasing, and hire purchase.

### **1. OVERALL COMMENTS**

FLA and its members unequivocally condemn the commission of offences under section 55 of the Data Protection Act, DPA, and we support moves to provide an appropriate and effective level of deterrent to offenders. However, FLA does have a concern that some breaches of the Act might be caused by the difficulty organisations sometimes face in obtaining information about debtors for legitimate reasons, and we would like the Department for Constitutional Affairs to give some consideration to ways of overcoming this obstacle.

### **2. SPECIFIC COMMENTS**

Turning to the specific questions in the questionnaire, our answers are:

Q1: We agree that custodial penalties should be available to the court when sentencing those who wilfully abuse personal data. We see three reasons for this: (a) to act as a deterrent; (b) to punish serious offenders; and (c) to introduce consistency with the penalties available in other, similar legislation.

Q2: Custodial sentences are likely to be a more effective deterrent than fines. However, for the deterrent effect to occur, the courts must make use of the sentencing available to them. We also recommend that the Proceeds of Crime Act should be used to punish offenders.

Q3: We agree that the proposed custodial sentences are of the right length.

Q4: A guideline issued by the Sentencing Guidelines Council sounds useful, but the important point is that, as stated above, the courts must make use of the sentencing available to them.

We would like to make an additional observation in response to the consultation. At the top of page 11, it is noted that it is not an offence to obtain, procure or

disclose data without the data controller's consent if it is necessary for the prevention or detection of crime. The example quoted is of a police officer requesting information from an employer on whether a person attended work on a particular day. Many cases of fraud and theft are investigated by private investigators, rather than the police, often because the police do not have the resource to take on the case. Despite requesting information legitimately for the detection of crime, private investigators often find it difficult to persuade third parties to disclose the required information, and it can be this that pushes investigators into using deception to obtain the required information. We would like the Department for Constitutional Affairs to give some consideration to ways of overcoming this obstacle, and we would be happy to discuss this in more detail with the DCA.

### 3. FLA CONTACT DETAILS

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