

DURING the heady days of summer we've had plenty of reading material in the credit press about industry regulation – in one case I counted more on this than other business-orientated topics. Certainly a sign of the times.

The 'noughties' (as the past decade has perhaps ironically come to be known) has been far from plain sailing for the credit industry, with pressures coming both from home and from the European Commission (putting aside the minor irritation of the global credit crisis).

It was back in the pre-credit crunch days of May 2007 at a Conference at Olympia when in my previous life as Director of Regulatory and Consumer Affairs at Experian, the ICM's Chief Executive Philip King, chaired a session at which I was presenting on the future regulatory landscape.

My closing observations were that it was up to businesses to take the initiative and not wait for regulation to be imposed on them; self-regulation was preferable to statutory imposition if this could be achieved. The future for the industry was dependent on the way we were perceived by and positioned with consumers, the media, regulators and Government – it was a collective responsibility.

Into the mix I also threw in comments about the powers of the Competition Commission evidenced by the then inquiries into home credit, store cards, Northern Irish bank accounts and PPI, all driven by 'super complaints'. The increasing pressures around bank pricing, mortgage advice, credit cards and security breaches were all putting the industry on the regulators' radar, in addition to the spiralling cost of managing regulation on top of the European influence – between 2004-06, around 20 EU measures had been imposed on UK industry.

Also at that time many of us were navigating the corridors of power in Brussels trying to get a degree of common sense built into the Consumer Credit Directive and avoiding a similar fate for the mortgage sector. Even now we are still at the crossroads of how the future regulatory framework will shape up with the Department for Business, Innovation and Skills undertaking a 'root and branch' review of consumer credit and personal insolvency. The jury is still out on whether this will involve more legislation or self-regulation.

A pragmatic balance

My views haven't changed since that conference over four years ago and are shared by many, not least of whom is Lord Hunt of Wirral, Chair of the Lending Standards Board, who was quoted as saying it should not be a choice between statutory or self-regulation – they can and should co-exist with the latter underpinning the former in a pragmatic balance.

So perhaps the overarching feeling in



Information

Amid the clamour for regulation of the credit industry, Mike Bradford

the industry at the moment in terms of regulation is one of uncertainty. One thing is a given – there are significant legal, commercial and reputational risks for organisations irrespective of size in today's highly regulated marketplace if they fail to embed core governance disciplines into business practice and corporate culture at all levels, or are perceived by stakeholders as failing to do so. There is also an upside and a proven correlation between investing in governance and winning regulator, customer and market confidence, directly leading to enhanced organisational performance and collateral and shareholder value. A reputation for trust and integrity is hard earned but very easily lost.

At the heart of compliance across all businesses, and in particular the credit sector where there are literally millions of highly sensitive personal records, is data protection and this serves to show the importance of taking regulation seriously

at the top of any organisation. Accountability lies in the boardroom, not with the compliance department. So how sensitive are customers – and the Information Commissioner – to data protection in the credit industry?

The Information Commissioner's Annual Report for 2010/11 published in July brings out some critical points for ICM members, their organisations and the industry as a whole:

- Lenders again topped the sector attracting most complaints at 13 percent and organisations found to be in breach are named in the public domain.
- The second most requested publication was 'Credit Explained' at 22,000 copies.
- 89 percent of people are aware of their data protection rights, compared to the baseline of 74 percent in 2004. An even higher number of young people at 95 percent – potentially those starting out

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fear of a data loss or breach.

If we are not legally compliant, it can lead to action by the Information Commissioner under the Data Protection Act 1998 and Privacy and Electronic Communications Regulations, as well as commercial and reputational damage through being seen by our customers and the market as being irresponsible with personal information. The Information Commissioner's view (source: The Privacy Dividend: the business case for investing in proactive privacy protection) is that protecting personal privacy makes good business sense and should bring real and significant benefits that far outweigh the effort privacy protection requires. The alternative, of ignoring privacy and leaving personal information inadequately protected, has significant downsides.

Commercial success therefore needs consumer confidence and data protection is really just good business practice for any organisation. It need not stop us doing legitimate and innovative things with data but what it does is to ensure that when doing this we respect

Information Commissioner's Office accurate and up-to-date? It is a criminal offence not to have this in place.

- Is our application form wording compliant to cover, for example, assessing the credit application; performing a credit search with a credit reference agency; sharing data with other lenders; and additional uses of that data, for example fraud prevention, money laundering checks and debtor tracing?
- What measures do we have in place around data security, including destroying information no longer used?
- Do we have a plan in place should any of our customer's information be lost or stolen?
- If we outsource any processing are these contracts compliant with the Data Protection Act and do we adequately vet our sub-contractors?
- Is any information processed overseas? What controls do we have in place to ensure compliance with the Act's requirements for transfers outside the European Economic Area (EEA)?
- How do we ensure we keep our customer data accurate and up-to-date – a critical requirement of the Act? Inaccurate data was the second highest number of complaints received by the Information Commissioner's Office in 2010/11 at 15 percent of the total.
- Do all our staff know how to handle a data subject access request – this has a statutory turnaround time of 40 days under the Act? In 2010/11 complaints about this ran at 28 percent – the highest number of complaints raised with the Information Commissioner's Office.
- Do we comply with requirements around automated processing and the consumer's right to object to direct marketing?
- Is our website compliant in terms of its privacy statement, marketing opt-ins/outs, channel preferences and most recently consent for cookies?

Addressing the above would be time well spent and at the very least give peace of mind, some organisations are increasingly using their approach and commitment to data protection as a competitive differentiator and have publicly signed up to the Information Commissioner's Personal Information Promise. Data protection is one regulatory challenge – and opportunity – where we can 'tick the box' now.



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exchange

examines the importance of data protection.

on their credit journey – are aware of their rights.

- The Information Commissioner is targeting increased awareness and consumer education as key objectives for this year.
- There is an immediate need to review websites to ensure changes are made to comply with new regulations about cookies – even cookies that do not identify the user and are used, for example, for analytical purpose only.
- The Information Commissioner can now fine up to £500,000 for breach of the data protection principles, recently extended to cover breaches of the electronic marketing regulations.

I would argue that the facts speak for themselves. Jeopardising consumer trust by being less than responsible with their personal information will go to the heart of our compliance obligations and customer relationships. Meeting our legal requirements is essential – but with the right approach we can actually build competitive differential and enhance our customers' experience at a time of increasing consumer and regulator concerns – and media interest – in data protection, privacy and the ever-present

the rights of the individuals whose data we are processing.

In the UK on the whole we enjoy a balanced data protection regime – unlike many of our European neighbours operating under the same Data Protection Directive but where interpretation is far more skewed to privacy per se. While there are moves afoot to review the Directive and increase harmonisation of approach across EU Member States, we should not jeopardise our position through reckless or careless handling of personal information. So while we wait to see the future of credit industry regulation, perhaps it is a good time to 'health-check' our data protection compliance – as much for business reasons as for regulatory compliance.

Checklist

A quick checklist which in itself won't guarantee compliance but will focus on the key areas, would include:

- Who is responsible in our business to ensure we are compliant with the Data Protection Act – and changes that come into effect – and that our staff are aware of and trained in our obligations?
- Is our register entry with the



Member Benefit

Discounts on Data Protection health check

MEETING your legal requirements around data protection is essential – if you are not legally compliant, it can lead to commercial and reputational damage, as well as action by the Information Commissioner, who can now fine up to £500k for breach of the data protection Principles, recently extended to cover breaches of the electronic marketing regulations.

However, with the right approach you can build competitive differential and enhance your customers' experience at a time of increasing consumer and regulator concerns – and media interest – in data protection, privacy and the ever-present fear of a data loss or breach.

Data protection and consumer affairs experts Regulatory Strategies are now offering members a unique data protection 'health-check' and ongoing 'helpline' opportunity at significantly discounted rates.

Regulatory Strategies (www.regulatorystrategies.co.uk) was founded in 2009 specifically to provide clients with highly practical and commercially focused consultancy around regulatory and consumer affairs, compliance and data protection to balance and minimise risk while at the same time driving bottom-line competitive advantage and market differential. Its culture is to facilitate and enable business, not prevent it.

The member benefits

Data Protection Healthcheck

For a one-off fee of £1,500 plus VAT Regulatory Strategies will provide a data protection 'health-check' to ICM members or their organisations. This represents a member discount of over 50 percent against standard fees and is significantly lower than typical professional legal firms on a time basis.

The member will be provided with an action-plan of any areas that require to be addressed – or where Regulatory Strategies consider that an overly risk-averse approach may be being taken.

The health-check will include the following:

- On-site meeting* or remote consultation
- Checking of Data Protection Act register entry
- Review of customer consent wording on all forms and documentation
- Compliance with the 8 data protection Principles
- Data security observations
- Marketing compliance
- Website and privacy notice review
- Report and recommendations

*Reasonable expenses may be charged for any on-site meeting



Regulatory Strategies

Additional optional consultancy will also be available at discounted rates around:

- Data protection policy drafting
- Data protection and customer service training
- Credit bureau data
- Credit report services and consumer advice
- Complaint handling
- Data optimisation
- Identity fraud solutions
- Data breach prevention and incident management
- Tailored 'best practice' guides

Data Protection Helpline and Support

To include:

- 24/7 access to Regulatory Strategies for a telephone consultation or discussion/view on a particular data protection (or associated) query. This can be triggered via an incoming call or a request for a discussion via email.
- If the call requires more input than can be covered during the call, the member will be quoted a fee for this.
- As part of this service the member will receive an inclusive monthly summary of topical and relevant data protection issues.

Regulatory Strategies are offering this one-year subscription service to ICM members (and their organisations) at £425 plus VAT.

Note: Any advice provided should not be taken as a substitute for professional legal opinion but as a starting point for the member to consider the most appropriate course of action on a particular issue. Regulatory Strategies will suggest to the client when further advice may be required.

Regulatory Strategies is running a complimentary seminar, **'Data Protection – a real benefit to your business'** on **Friday 7 October at The Belfry Hotel, Nottingham**. To find out more visit www.regulatorystrategies.co.uk

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