

# Society for Computers & Law

## Criminal Records and Data Protection Principles: Police v Information Commissioner

A new decision of the Information Tribunal supports the supremacy of the data protection principles, includes clear criticism of the failure of the police to grapple properly with the data protection principles and dismisses arguments that the ACPO code on retention of data constitutes a valid code for the PNC.

The Information Tribunal heard appeals against the Information Commissioner's issue of enforcement notices relating to the Police National Computer. The issue was whether information held on the PNC about certain individuals ought to be deleted from it. The full text of the Tribunal decision can be accessed [here](#).

The case reveals a fundamental difference of approach between the Commissioner and the police in relation to criminal conviction information held on the PNC. The police approach is that criminal conviction information should not be deleted from the PNC except in very rare circumstances, but that such information should in certain circumstances 'step down', ie that it should remain on the PNC but should only be accessible to police users of the PNC. The step down approach derives from an earlier Information Tribunal decision, or at least the ACPO interpretation of that decision. The Commissioner has endorsed the step down approach, but claims that there should also be provision for conviction information to 'step out' from the PNC – ie to be removed altogether. The Home Office, which was permitted to make written submissions to the Tribunal, took the view that even the step down approach is wrong in law in certain circumstances because of the need for other agencies to have access to such data.

The five particular instances under consideration are exemplified by three of the persons who complained about the retention of data on the PNC:

- H, whose conviction as a 17-year-old for shoplifting was revealed 22 years later and threatened his employment as a care worker;
- SP, who, when aged 13, assaulted another girl and then found that her reprimand was revealed to her employers, although she had been informed by the police officer who reprimanded her that the matter would be removed by the time she was 18 if she kept out of trouble (as was the policy at that time);
- WMP had inserted metal blanks into an amusement machine and had been convicted of attempted theft in 1978 when aged 15 but his conviction was revealed on a disclosure certificate to Humber Parascending when he applied for a position on a Summer Scorcher Activity

All but one of the convictions would have been 'weeded out' under police procedures that applied prior to the 2006 Guidelines coming into force.

The appeal was greatly complicated by the fact that an earlier Tribunal decision (in 2005) had not really been accepted or implemented by ACPO. The Tribunal concluded (at [205]-[209]) as follows:

*205. The Tribunal accepts that it is a police purpose to disclose conviction data held on the PNC to bodies such as the CRB and ISA who require such information in order to undertake their statutory duties. However the Tribunal finds that this does not mean that Chief Constables are required to retain conviction data on the PNC, in effect, indefinitely even if no longer required for their core purposes. Chief Constables are required to process personal data including conviction data in accordance with their statutory obligations under the DPA and HRA. If such compliance requires the erasure of conviction data, as seems to be accepted by the Appellants that it does for soft criminal intelligence or data, then that information will no longer be held on the PNC. This does not mean that the police are in breach of other statutory obligations because these other obligations, as explained above, in our view go no further than require the police to disclose information held on the PNC. This position has existed for many years with the weeding of conviction data in England and Wales up until 2006 and seems to exist quite happily in Scotland up to this very day. If the government requires a different regime to operate then it will need to legislate accordingly with all the necessary safeguards that would be considered appropriate.*

*206. We find that the responsibility for complying with the DPPs is that of the data controllers in these appeals namely the Chief Constables of the police forces involved, not ACPO. Any advice or guidance from ACPO cannot replace this responsibility under the DPA. The Chief Constables responsibility is to consider each case for the stepping out of conviction data on its own individual merits taking into account all the circumstances including*

*any advice from ACPO in accordance with the DPA. This clearly happened in the case of GMP2.*

*207. Having considered all the evidence and arguments of the parties in these appeals and that the burden of proof lies on the Commissioner we uphold the Enforcement Notices in these particular cases and dismiss the appeals. We require the Appellants to erase the conviction data in question from the PNC within 35 days of the date of this decision.*

...

*209. ACPO seems to have ignored the guidance provided in the 2005 Tribunal decision at paragraph 225 of the judgment in relation to stepping out of conviction data. We appreciate that policing requirements have changed since that decision but the 2006 Guidelines do not appear to us to even attempt to provide a proper consideration of DPPs 3 and 5 in contrast to other police codes referred to in this decision.*

Mick Gorrill, Assistant Commissioner at the ICO, said:

'We welcome the Information Tribunal's ruling which upholds our view that there is no justification for this old conviction data to be held by the police. We believe that this a landmark ruling which will have wider implications for police forces around the country and will ensure that irrelevant details of old criminal convictions are deleted. Those concerned were caused harm and distress by the retention of this data. These five cases – some of which date back nearly 30 years – relate to individuals who have been convicted or cautioned on one occasion and have not subsequently been convicted of any other offences. This is an important ruling and one that is likely to influence our handling of complaints in the future.'

Ian Readhead, Deputy Chief Constable of Hampshire and ACPO lead on data Protection and Freedom of Information said:

'We are very disappointed with the decision of the Information Tribunal today, which could have far-reaching implications for the police service as a whole. The Richard Inquiry which followed the tragedy of the Soham murders recommended that forces should reconsider the way in which records are managed. It is now important that clear national guidelines are put in place so that forces take a consistent approach to the retention of criminal records. Our aim is to ensure that the police service can be in the best possible position to protect the public. We will now take some time to discuss these implications with the service and decide on the most appropriate course of action.'

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