

## DATA PROTECTION ACT 1998

### UNDERTAKING

Data Controller: NHS Blood and Transplant (NHSBT)

Oak House  
Reeds Crescent  
Watford  
Hertfordshire  
WD24 4QN

I, Alan McDermott, Senior Information Risk Officer, with NHS Blood and Transplant (NHSBT), for and on behalf of NHSBT hereby acknowledge the details set out below and undertake to comply with the terms of the following Undertaking:

1. NHSBT is the data controller as defined in section 1(1) of the Data Protection Act 1998 (the "Act"), in respect of the processing of personal data carried out by NHSBT and is referred to in this Undertaking as the "data controller". Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data in respect of which it is a data controller.
2. On 12<sup>th</sup> April 2010 NHSBT informed the Information Commissioner (the "Commissioner") of a large number of data sets which had been discovered to be inaccurate.
3. In March 2010 an error had been found between the organ donor information stated on DVLA applications forms and the information that was being recorded on the Organ Donor Register (ODR) at NHSBT. Upon investigation it was discovered that a software error was introduced into the system, in early 1999, which had affected the recording of specific organ preferences from the DVLA. This meant that a number of citizens' organ preferences were being recorded inaccurately and other than in accordance with their intended wishes. An immediate stop was made on all data files received from the DVLA and a full, and independent, investigation was undertaken.
4. While the vast majority of NHSBT data remained accurate, some 444,031 records were discovered to be inaccurate, but

believed to be correctable.

5. The NHSBT was also unable to establish whether a further set of records were accurate or not. All if the citizens in this category were written to in order to confirm their preferences.
6. The Commissioner has considered the data controller's compliance with the provisions of the Act in the light of this matter. The relevant provision of the Act is the Fourth Data Protection Principle. This Principle is set out in Schedule 1 Part I to the Act. The Commissioner has also considered the particularly sensitive nature of the data in question.
7. Following consideration of the remedial action that has been taken, or is in the process of implementation, by the data controller, it is agreed that in consideration of the Commissioner not exercising his powers to serve an Enforcement Notice under section 40 of the Act, the data controller undertakes as follows:

The data controller shall, as from the date of this Undertaking and for so long as similar standards are required by the Act or other successor legislation, ensure that personal data are processed in accordance with the Fourth Data Protection Principle in Part I of Schedule 1 to the Act, and in particular that:

1. While it is noted that it is intended to commission a new replacement Organ Donor Register (ODR), which is subject to NHSBT securing sufficient funding from the four devolved administrations in the UK, at this time NHSBT must operate within the constraints of the existing ODR infrastructure, and the current system shall be made robust in terms of the accuracy of information held.
2. Systematic sampling and checking of data for accuracy against source documents or cross-references must be undertaken routinely, with a frequency and scale determined by statistical modelling. Exercises shall be undertaken routinely to challenge the performance of various parts of the system infrastructure.
3. All external forms on which citizens are asked to agree to donate either all or specific organs should collect the same data in a uniform way.

4. NHSBT's current practice of writing to all new registrants giving them an opportunity to report any errors in their recorded details shall continue. All reported errors will be investigated. Error rates, broken down by Partner organisation, shall be closely monitored and routinely shared with Partner organisations with a view to minimising them.
5. NHSBT will invite an external organisation, with experience and expertise in running a large, secure database, to review its proposed new control systems.
6. In the future the ODR shall always be consulted as an essential part of the process of establishing consent for organ donation.
7. Ticking the boxes for organ donation on third party forms shall trigger the sending of further information from NHSBT to the citizens concerned. This will give essential information about what it means to be an organ donor and it will provide the answers to frequently asked questions. Crucially it shall also give citizens clear advice on what to do if they want to check their own record held on the ODR and, if necessary, change the wishes they have previously expressed.
8. The effect of a citizen ticking a box against the name of a specific organ is to indicate their consent to the donation of that organ. But, in the absence of some explanation, they may be less clear about the implications of not ticking a box against the name of a particular organ. NHSBT will ensure that future guidance provided on the point will be unambiguous.
9. The data controller shall implement such security measures as it deems appropriate to ensure that personal data is protected against unauthorised and unlawful processing, accidental loss, destruction, and/or damage.

Dated.....

Signed.....

Alan McDermott  
NHS Blood and Transplant  
Senior Information Risk Officer  
Oak House  
Reeds Crescent

Watford  
Hertfordshire  
WD24 4QN

Signed.....

Mick Gorrill  
Assistant Commissioner, Regulatory Action Division  
For and on behalf of the Information Commissioner