

GUIDANCE FROM INFORMATION COMMISSIONER'S OFFICE

Information about a sole trader's business is likely to be personal data relating to the sole trader, and therefore there are restrictions under the Data Protection Act 1998 ("DPA") as to how this data is 'processed' (including its release). The following is a summary of the guidance given by the Information Commissioner's Office ("the ICO") to FSCS:

- The DPA provides for circumstances in which disclosures of personal data can be made on very clear grounds

These include where there is an express legal duty or power to disclose, where a non-disclosure exemption (such as that in s35 of the DPA) applies, where it is quite clear to the individuals concerned that such disclosures are likely to occur either because this is obvious in the context or because the likelihood of exposure has been expressly explained to them. For example, if a claimant is in the process of initiating proceedings, the exemption at s35(2) of the DPA will apply. There is also an argument that this exception applies where a claimant is not contemplating immediate recourse to formal legal action.

- In general it will not be necessary for FSCS to rely on an exemption under the DPA; disclosing personal data in the context of a business relationship is unlikely to breach fair processing requirements of the DPA

Where there is a business relationship (for example where an individual who has traded with sole trader and subsequently wishes to make a complaint against them), it is unlikely to be regarded as unfair to release the contact details of a sole trader. This is because in deciding whether the release is inherently unfair to the sole trader the full circumstances must be taken into account, and whilst the sole trader may receive contact from an aggrieved customer as a result of the release of his personal data, very considerable weight has to be given to the legitimate interests of the customer in being able to make contact with the sole trader in order to seek recompense.

ICO is of the view that personal data relating to someone acting in a business capacity is inherently less private than information relating to an individual's home life. Where FSCS can obtain both a business address and a home address the release of the business address is easier to justify as not being unfair to the sole trader for the reason above.

- Though it may not be strictly necessary, FSCS can be justified in releasing the sole trader's contact details to the claimant, even if the claimant could have obtained those details by himself/herself

Where the contact details of a sole trader would be obtainable by a claimant (following a process similar to that used by FSCS), it would be perfectly legitimate for the FSCS to save the claimant the trouble and expense of doing so. The word 'necessary' in paragraph 6 of Schedule 2 of the DPA should not be construed in the sense of 'strictly' necessary, but 'reasonably' necessary. Whilst it may not be strictly necessary for FSCS to give the contact details to a claimant who could discover them on his/her own, it is reasonably necessary for FSCS to release the data in the context of not making things more laborious and time consuming for others than they need to be.