First Data Protection Principle
Fair processing – further guidance

The Data Protection Act (DPA) says that:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

All “processing” of personal data must be fair as well as satisfying the relevant conditions for processing. “Processing” broadly means collecting, using, disclosing, retaining or disposing of personal data and, if any aspect of processing is unfair, there will be a breach of the first data protection principle – even if you have met one or more of the conditions for processing.

What makes processing “fair”?  
Fairness generally requires you to be transparent - clear and open - with individuals about how their information will be used. Transparency is always important, particularly in situations where individuals have a choice about whether they wish to enter into a relationship with you.

If individuals know at the outset what their information will be used for, and to whom it may be disclosed, they will be able to make an informed decision about whether to enter into that relationship.

Obtaining personal data fairly
Assessing whether information is being processed fairly depends partly on how it is obtained.

Regard is to be had to the method by which personal data are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed. If anyone is deceived or misled when the information is obtained, then this is unlikely to be fair.

In general, personal data will be obtained fairly if the data subject is advised of the name of the data controller and the purpose(s) for processing the personal data. This is known as the “prescribed information”.

The “prescribed information” is:
(a) the identity of the data controller, or his nominated representative,
(b) the purpose or purposes for which the data are intended to be processed, and
(c) any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.

This information may be included on an application form or other documentation, on the website or provided verbally.

It must be provided to the data subject at the point of collection or, if the personal data is obtained from a third party, as soon as is practical. It must be clear to individuals and should not deceive or mislead.
Example – unfair obtaining

A competition in a newspaper does not indicate that the entrants’ names and addresses may be sold to third parties for use in direct marketing.

If there is an intention to sell the personal data to third parties then it is unlikely that the personal data will have been obtained fairly.

Example – fair obtaining

In the example above, the email addresses would be fairly obtained and processed if the competition entry form stated

“Your email address may be sold to third parties for direct marketing purposes. If you wish your email address to be passed to third parties, please tick this box.”

Fair obtaining – legal obligation/requirement

The DPA says that information should be treated as being obtained fairly if it is provided by a person who is legally authorised, or required, to provide it.

Where there are statutory obligations to obtain personal data, it is not always necessary to provide data subjects with the prescribed information.

Personal data will be obtained fairly by the tax office if it is obtained from an employer who is under a legal duty to provide details of an employee’s pay, whether or not the employee consents to, or is aware of, this.

Fairness of some other ‘processing’ activities

Personal data may sometimes be used in a manner that causes some detriment to (negatively affects) an individual without this necessarily being unfair. What matters is whether or not such detriment is justified.
Example – fair, but detrimental, use

Where personal data is collected to assess tax liability or to impose a fine for breaking the speed limit, the information is being used in a way that may cause detriment to the individuals concerned, but the proper use of personal data for these purposes will not be unfair.

Fair processing – unfair disclosing

When an individual enters into a mobile phone contract, they know the mobile phone company will keep their name, address and bank account details for billing purposes. This should be obvious to the individual and does not need to be spelt out.

However, if the company wants to use the information for another purpose, perhaps to enable a sister company to make insurance offers, then this would not be obvious to the individual customer and should be explained to them, otherwise it may be unfair.

Fair processing – fair disclosing

A patient visiting their GP for a routine check-up knows the identity of the data controller and the purposes for which their personal data will be processed, namely the provision of healthcare. This is usual business for the doctor's surgery and there is no further prescribed information to give the individual.

If the GP sends the patient for specialist tests or treatments, additional “further information” will be necessary to make the processing fair - they should be advised that their personal data will be shared with the particular specialist service provider for the particular purpose.