

If an individual believes they are, or have been, directly affected by the processing of their personal data, the Data Protection Act provides them with the right to “request an assessment”. This is the technical term for making a complaint.

Making a complaint

An individual, or someone acting on their behalf, must make a written complaint to the Commissioner. A complaint form is available online in the document library or, alternatively, details may be included in a letter, or email, to the Commissioner.

All evidence supporting the complaint, including correspondence relating to the individual’s attempt to achieve satisfaction from the data controller prior to making the complaint, must also be provided.

Outcome achievement times vary, but the Commissioner expects complaints to be finalised within 6 months. The complainant will be advised of any undue delay.

Action on receipt of a complaint

On the day of receipt, or as soon after as practicable:

- Complaint number is allocated
- An acknowledgment letter is sent to the complainant
- Dialogue is opened with the organisation (data controller) the complaint is about

How an ‘assessment’ is undertaken

When a complaint is received the Commissioner is required to “make an assessment” of the processing of that individual’s personal data by the data controller.

The Commissioner decides on the most appropriate manner to undertake the assessment. This can depend on the extent to which, among other things, the complaint raises a matter of substance, the damage that is likely to be caused to an individual(s), any undue delay in making the complaint, and whether the complainant has, or has tried to, exercise their rights already.

The manner in which a complaint is investigated can include, but is not limited to:

- Contacting the data controller to request that information relevant to the assessment is provided, either informally or through the issue of an Information Notice;
- A mutually convenient visit to the premises of the data controller, either by consent or where necessary, by Court Order
- Combination of the above

Information obtained by the Commissioner in connection with an assessment is confidential to the Commissioner and can only be disclosed by court order.

The view of the Commissioner

The Commissioner is only empowered to form a view as to whether “it is likely or unlikely that the processing has been, or is being, carried out in compliance with the provisions of th[e] Act”. In forming a view, the Commissioner will consider all the evidence and information provided by the complainant, the data controller, and any obtained, or observations made, through other means.

This view will be communicated to both the complainant and the data controller, together with details of any action that is required by the data controller, or which has been taken as a result.

If the complainant disagrees with the view formed by the Commissioner, they may take further action against the data controller through the Court.

Further action by the Commissioner

Where the Commissioner considers it appropriate, he may serve the data controller with an Enforcement Notice, under section 36 of the Act, requiring the data controller to take certain steps to ensure that the processing of personal data accords with the requirements of the Act.

Failure to comply with an Enforcement Notice is an offence. The data controller may lodge an appeal against the issue of an Enforcement Notice with the Data Protection Tribunal if it considers that the Enforcement Notice was not issued in accordance with the law, or the Commissioner could have exercised his discretion differently in issuing the Enforcement Notice.

In circumstances that the Commissioner considers appropriate for negotiation and mediation, the data controller may be offered the chance to sign an Undertaking as an alternative to the issue of an Enforcement Notice. However, failure to comply with the terms of the Undertaking is likely to result in the issue of an Enforcement Notice.

Further information on the regulatory action that can be taken by the Commissioner is available in the document library.