

# Memorandum of Understanding

## The Information Commissioner and Nacro's Resettlement Advice Service

### **Introduction**

- 1.n This Memorandum of Understanding (MoU) establishes a framework for co-operation and information sharing between Nacro via the Resettlement Advice Service and the Information Commissioner (the Commissioner) in connection with the sharing of relevant Information and Intelligence, set out at 13 below. It sets out the role of each organisation and documents the practical working level arrangements between the Commissioner and the Resettlement Advice Service.n
- 2.n The Commissioner and Nacro will monitor the operation of this memorandum and will review it, initially after six months from the date of this document, and subsequently from time to time as necessary.n
- 3.n Any changes to this memorandum identified between reviews may be agreed in writing between the parties.n
- 4.n Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation (referred to in 26 below).n
- 5.n This memorandum is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or Nacro.n

### **Functions and powers of Commissioner**

- 6.n The Commissioner is a corporation sole appointed by Her Majesty the Queen under the Data Protection Acts 1984 and 1998 to act as the UK's Independent regulator promoting public access to official information and protecting personal data.n
- 7.n The Commissioner regulates the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR), the Environmental Information Regulations 2004 (EIR) and the INSPIRE Regulations 2009.n

8. Section 51 of the DPA places a duty on the Commissioner to promote the following of good practice by data controllers and the observance of the requirements of the DPA by organisations.
9. Where the Commissioner is satisfied that any of the data protection principles have been breached, a number of steps can be taken to seek to change the behaviour of the organisation including:
  - serving information notices requiring organisations to provide the Information Commissioner's Office with specified information within a certain time period;
  - issuing undertakings committing an organisation to a particular course of action in order to improve its compliance;
  - serving enforcement notices where there has been a breach, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;
  - conducting consensual assessments to check organisations are complying; and
  - issuing monetary penalty notices, requiring organisations to pay up to £500,000 for serious breaches.
10. The Commissioner may also prosecute those who commit criminal offences under the DPA.

### **Functions of Nacro's Resettlement Advice Service**

11. The relevant functions of the Resettlement Advice Service for the purpose of this MoU with the Commissioner are set out in the points below:
12. The Resettlement Advice Service endeavours to support individuals who have been forced by an organisation to carry out an enforced subject access request (typically in relation to criminal record data). We will alert the Commissioner to all instances of enforced subject access that come to our attention.
13. The Resettlement Advice Service provides support to individuals that who have been subject to unlawful criminal record checks carried out through the Disclosure and Barring Service (DBS). We will report all instances of unlawful checks to the Commissioner; and also report to the Commissioner, organisations that have policies in place requiring applicants to give forced consent to provide their personal sensitive data (typically in relation to criminal record data) which is also unlawful through other legislation including: the Rehabilitation of Offenders Act 1974, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as

amended in 2013), Part V of the Police Act 1997 and the Protection of Freedoms Act 2012.

14. The Resettlement Advice Service seeks to challenge organisations who unlawfully carry out enforced subject access requests, as set out in 13, above.
15. Where the Resettlement Advice Service is aware of organisations that have application forms or policies in place which do not comply with DPA or other relevant legislation (as set out in 14, above), we seek to challenge the organisation and also report any suspected breach of DPA directly to the Commissioner.
16. The Resettlement Advice Service further seeks to challenge organisations that require applicants to disclose fixed penalty notices (FPN), penalty notices for disorder (PND), arrests, allegations, not guilty verdicts, disciplinary matters and other personal and sensitive data, which we suspect to be breaches of DPA; and are also not legally required to be disclosed as part of a criminal declaration for employment or other purposes. The Resettlement Advice Service will alert the Commissioner of all instances of this issue that are brought to our attention.

#### **Cooperation between the Commissioner and the Resettlement Advice Service**

17. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the Resettlement Advice Service agree that they will alert the Commissioner to any potential breaches of the legislation he regulates discovered whilst undertaking its duties, and provide relevant supporting information and intelligence.
18. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at his discretion, the Commissioner agrees that he will alert the Resettlement Advice Service to any potential breaches of the legislation it regulates, or information relevant to the aims set out at 11 above, discovered whilst undertaking their duties, and provide relevant supporting information.
19. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, both parties will:
  - a) Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats); and

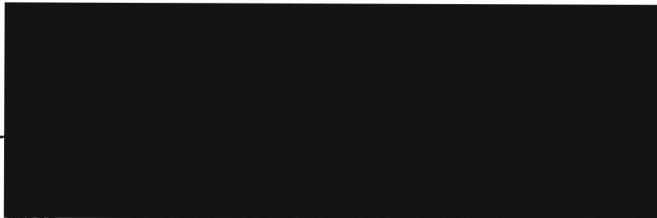
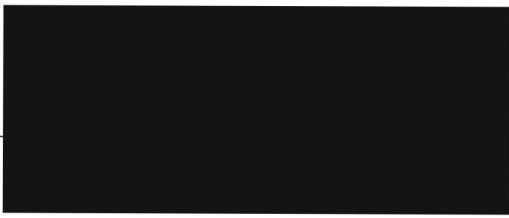
- b) Consult one another on any issues which might have significant implications for the other organisation.

### **Sharing information**

- 20. Subject to any disclosure restrictions applicable to the Resettlement Advice Service, they may disclose confidential information to the Commissioner to facilitate the carrying out any required function of the Resettlement Advice Service or a statutory function of the Commissioner, as set out in 13 and 15 above.
- 21. Where the Resettlement Advice Service wishes to disclose to the Commissioner information necessary for the discharge by the Commissioner of his functions under the DPA (or under FOIA), section 58 DPA provides that no enactment or rule of law prohibiting or restricting the disclosure of information shall preclude the Resettlement Advice Service from furnishing such information to the Commissioner.
- 22. In respect of information obtained by or furnished to the Commissioner for the purposes of his functions under the Information Acts, it is an offence under section 59 DPA for any current or former member of the Commissioner's staff or his agent to disclose such information without lawful authority.
- 23. Section 59(2)(e) DPA provides that a disclosure by the Commissioner of information obtained by or furnished to him is made with lawful authority where, having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- 24. In addition, section 59(2)(d) DPA provides that a disclosure of information by the Commissioner is made with lawful authority where the disclosure is made for the purposes of any proceedings, whether criminal or civil.
- 25. The Commissioner may, at his discretion and in accordance with sub-sections 59(2)(d) and/or (e) DPA, disclose confidential information to Resettlement Advice Service, where this is necessary for performing the functions set out at 8 and/or 9 above.

## Points of contact

26.

Nacro	Information Commissioner
Peter Buffoni, Head of Commercial and Employer Advice Service	Adam Stevens, Intelligence Hub Manager
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Nacro



(Signature)

Peter Buffoni, Head of Commercial

(Name and title)

20.01.2015

(Date)

Information Commissioner



(Signature)

CHRISTOPHER GRAMM  
INFORMATION COMMISSIONER  
(Name and title)

28/1/2015

(Date)

