



Headlines this month:

- Information Commissioner's Office - loses appeal over fine
- Ministry of Justice warns claims firms
- Enforced subject access requests
- Social Housing organisations warned
- Recent data breaches
- EU update

Commentary:

■ Information Commissioner's Office - loses appeal over fine

The Information Commissioner's Office has lost its appeal against a decision to overturn a £300,000 monetary penalty that it had issued against an individual who the ICO stated had committed a serious breach of UK privacy laws.

Owners of Tetras Telecoms were fined in 2012 for a breach of the Privacy and Electronic Communications Regulations resulting from unsolicited marketing activities. One individual appealed his fine and won at a First-Tier Tribunal. The Upper Tribunal has now agreed with that decision stating that the actions were unlikely to have caused individuals' substantial damage.

■ Ministry of Justice warns claims firms

Lord Faulks QC has warned rogue claims firms that they will face large fines. Claims management companies will be fined for using information gathered by unlawful unsolicited calls and texts or for wasting people's time and money by making spurious or unsubstantiated claims or for misleading marketing.

Justice Minister Lord Faulks said:

"No longer should claims companies be able to plague hardworking people and waste everyone's time. The scale of these fines shows just how serious we are about stopping them."

"This is also good news for the reputable firms in this industry, as it will boost confidence in the service provided by the sector."

■ Enforced subject access requests

The Ministry of justice has announced that enforced subject access requests will become a criminal offence from 1st December 2014. Individuals will no longer be forced by someone e.g. a prospective employer, to make a subject access request and reveal the results to them.

The ICO has stated:

"We welcome the news that it will become a criminal offence to require someone to make a subject access request. It is a clear perversion of an individual's own rights, with consequences like unwarranted loss of employment opportunities. It also undermines important public policies such as the rehabilitation of offenders."

"Our next step is to develop guidance that explains what this law means for organisations and for individuals."

■ Social housing organisations warned

The Information Commissioner, Christopher Graham, has highlighted important data protection issues facing the social housing sector. He referenced data sharing with other organisations, data retention and secure home working at the Chartered Institute of Housing Conference.

Christopher Graham stated:

"Over two million people live in social housing across the UK, many of them vulnerable groups such as the disabled and the elderly. It is therefore essential social housing organisations understand their responsibilities under the Data Protection Act, especially as much of the information they handle is so sensitive."

"The ICO wants to work with the sector to help improve areas, such as data sharing, retention schedules and secure home working. Tenants' trust is one of the sector's most valuable resources, and shouldn't be squandered on preventable breaches. By implementing clear policies and procedures alongside appropriate staff training, social housing organisations will be able to prevent these breaches and introduce the foundations of a secure data protection regime."

■ Recent data protection breaches

Maze Prison

The Northern Irish Prison Service has received a warning from the Information Commissioner's Office further to the sale at auction of a filing cabinet containing Maze Prison records. The incident dated back to 2004 and the information containing staff records together with details of a high profile prisoner. The matter was not referred to the Information Commissioner's Office which only became aware further to a similar incident in 2012 (where less sensitive information was involved).

At the date of the second incident, the Ministry of Justice Northern Ireland had taken responsibility for Irish prisons - the Department of Justice received a fine of £185,000.

DC Marketing Limited

DC Marketing Limited, based in Glasgow, has been ordered to cease making marketing calls by the Information Commissioner's Office. Calls relate to the sale of solar panels. The ICO became involved after 280 calls were made to them and to the Telephone Preference Service.

The Assistant Commissioner for Scotland stated:

"The law is clear. Companies must not contact individuals who have asked not to be called. DC Marketing Limited failed to respect people's wishes and even lied in order to try and avoid detection.

"The have now been punished for their actions and served with an enforcement notice ordering them to stop making nuisance calls. If the company breaches the notice then it will be treated as a criminal offence."



The below provides an EU update from a Regulatory Strategies' partner, Newgate Public Relations, in Brussels, and provides an insight into the progress of the EU's draft data protection regulation:

The last formal Justice and Home Affairs (JHA) Council meeting under the Greek Presidency on 6 June made some progress in the negotiations by achieving a partial general approach on the Data Protection Regulation. The agreement was based on the revised text the Presidency had prepared at the end of May.

The likelihood of coming to an agreement was often questioned, in particular by the Dutch regulator Jacob Kohnstamm who openly had cast doubt on whether the EU ministers would reach even a partial deal on the reform. Kohnstamm said that there were "battles" going on within the Council of Ministers about two aspects of the proposed reforms in particular: the "one-stop-shop" mechanism and the issue of the greater administrative burden for businesses. He feared that the failure to agree on those issues could hold up the other reforms contained in the proposals.

Nevertheless the Justice Ministers have reached an agreement partly thanks to the working method of a step-by-step approach by reaching intermediary agreements on particular issues of the Regulation itself and this time they agreed on the territorial scope, the respective definitions of "Binding Corporate Rules" and "international organisation" and the transfer of personal data to third countries or international organisations.

Vice-President and Justice Commissioner Viviane Reding said she was glad with the way things progressed:

"On the data protection reform, we clearly moved from dormant to dynamic negotiations. It is in the interest of companies to have legal certainty rather than having to spend money on costly law suits only to arrive at the same result at the end."

Trade association DIGITALEUROPE welcomed the partial agreement as well, especially with regards to the issue of international data transfers which will ease data flows both within the EU and beyond. Speaking on behalf of DIGITALEUROPE, Rene Summer, who is also Director for Government and Industry Relations at Ericsson, said:

"The improvements to chapter 5 come at zero cost to citizens' privacy. This shows that there doesn't have to be a trade off between improving the legal framework for companies and protecting citizens' data."

As far as the one-stop-shop mechanism is concerned, the Council defined guidelines for future work, since no agreement was reached. It has held a policy debate on the basis of a document prepared by the Greek Presidency, which concluded that there was a large number of member states which considered that the direction taken in the paper was a positive one and that the future Italian Presidency will continue to work on the "one stop shop" mechanism on this basis.

Chris Sherwood of the Industry Coalition for Data Protection underlined once again the importance of this topic:

"A clear commitment to a meaningful one-stop-shop mechanism that operates on the premise of 'one decision, one outcome' would provide legal certainty and greater efficiency for industry, citizens, and regulators alike", he said.

The EU and US have also successfully managed to obtain a data protection umbrella agreement.

The US thereby plans to extend the same rights as Americans have to EU citizens whose data has been breached or misused in the US. Both parties have been in talks about this topic already since March 2011 and the US attorney general Erik Holder gladly

announced that EU citizens would receive the same treatment as US citizens:

“EU citizens would have the same right to seek judicial redress for intentional or wilful disclosures of protected information,” thereby referring to US citizens’ privileges under the so-called Privacy Act.”

The agreement implies that, among other things, EU citizens not living in the US can take people to court in the US on the same legal basis as Americans. For instance, an EU citizen whose name is incorrectly or inadvertently placed on a US blacklist would be entitled to go to court and have it removed by an American judge.

In terms of the way forward for the data protection framework, the Italian Ambassador to the EU and head of the Italian Presidency of the Council as from July, Stefano Sannino, stated that the overhaul of the EU data protection framework is among the priorities of the incoming Italian Presidency of the Council of the EU (1 July – 31 December).

He described Italy’s stance as ambitiously realistic with regards to what could be achieved by the end of the year. The Presidency is to steer the discussions focusing on the broad direction of the legislation that should avoid national fights over details. Sannino admitted that the work of the Italian Presidency will be challenged by Brussels’ institutional environment as both the Parliament and the Commission are changing.

In this context businesses can seek to take advantage of this situation by continuing to engage with the EU institutions – bearing in mind that the MEP delegation to the trialogue is likely to include new MEPs after the elections and a new Commissioner after the new Commission will take office in November.



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