



Headlines this month:

- Department of Culture Media and Sport
- PECR rules for fundraisers
- Safe Harbor
- Recent data protection breaches
- EU update

Commentary:

■ EData Protection reform update

Department of Culture Media and Sport

Policy responsibility for the Information Commissioner's Office has moved from the Ministry of Justice (MoJ) to the department of culture of Culture Media and Sport (DCMS) – the changes were confirmed in a statement from David Cameron.

The Information Commissioner, Christopher Graham, commented:

"As the independent arbiter for information rights, we have business with different Whitehall departments on different topics. It is important that the ICO remains free to advise and to warn as necessary – and to bring both the privacy and transparency perspectives to policymaking in key areas. And we need always to be able to speak up for citizens and consumers."

"It makes sense for the ICO to be well connected to debates around the impact and potential of the digital economy – but at the same time we need independence to do our job. DCMS has responsibility for digital issues, but also deals with very many arm's length bodies whose independence is their key contribution. The current sponsorship and DP policy teams working at the MoJ will be transferred to the DCMS. This gives me added confidence that the DCMS will be well prepared to cope with the demanding agenda ahead."

■ PECR rules for fundraisers

The National Council for Voluntary Organisations has issued a report recommending fundraisers comply with the Privacy and Electronic Communications Regulations and comply with the Information Commissioner's Office's direct marketing guidance. The ICO has welcomed the report in light of recent media focus on the charity sector and fundraising. Changes are intended to protect vulnerable donors and restore public trust in fundraising.

The report states:

"We now have the opportunity, indeed the duty, to bring about change. We believe our proposals will create a simple and clear system, comprehensive to the public and charities, and proportionate to the issues at hand. The clear majority of those we have spoken with as part of this Review have expressed their full appreciation of the seriousness of the problems and clear desire to find a solution. We hope to have provided a constructive way forward, including plans for implementation,"

The changes will ensure:

- Clear messaging about how donors can easily opt-out of communications
- Minimum font sizes will be adopted for opt-in and opt-out statements
- Charities will be banned from selling personal data to third parties

- Charities will only be able to share personal data with third parties for fundraising if that individual has opted-in and provided explicit consent
- Fundraisers will have to end a telephone call when asked
- All calls will need to be made from an identifiable number
- A requirement to limit requests to 'reasonable persuasion' will be replaced with a clear requirement prohibiting intrusive or persistent behaviour placing pressure to donate

The ICO has responded to the report by saying:

"We welcome the fundraising review report and particularly the clear recommendations that fundraisers should comply with the Privacy and Electronic Communications Regulations and put our direct marketing guidance into practice."

■ Safe Harbor

The Court of Justice of the European Union (CJEU) made an announcement on 28th September 2015 stating that it will issue its binding judgment regarding safe Harbor on 6th October 2015.

The US Government and European Commission have been involved in dialogue to strengthen the Safe Harbor framework which has recently been called into question.

We will provide an update in October's Newsletter. More information is provided below in the EU update.

■ Recent data protection breaches

Home Energy and Lifestyle Management Limited (HELM)

HELM has been fined £200,000 by the Information Commissioner's Officer further to breaking marketing call regulations. Six million automated calls were made offering 'free' solar panels resulting in 242 complaints in two months.

HELM did not have permission to make automated and were misleading calls. The company acknowledged that they did not understand the rules.

The ICO's Head of Enforcement said:

"This company's ignorance of the law is beyond belief. It didn't even bother to find out what the rules were and its badly thought out marketing campaign made people's lives a misery. The monetary penalty is for a significant amount because of the clear failings of the company, and the number of people affected by its deliberate and unlawful campaign.

"It should be a warning to other companies to think before they launch into a campaign. Direct marketing campaigns can be run within the law with a little thought and there's plenty of advice available to companies in the ICO's website."

Commentary on the Direct Marketing Association (DMA) website referenced the penalty:

"While this is very welcome, it does not address the fact that directors of companies can, and do put companies into liquidation to avoid financial penalties for non compliance, and then simply start new ones..."

"...the public, politicians, civil servants and bureaucrats in Europe do not draw lines between calls that break TPS rules, SPAM email, rogue SMS, and direct offers that do not meet CAP rules. They lump them all in together as a nuisance and demand action, and not of the lightweight variety."

Cold Call Elimination Limited

Cold Call Elimination Limited has been fined £75,000 for making unsolicited marketing calls to sell cold call blocking devices to block the type of calls it was itself making.

Elderly and vulnerable individuals complained after receiving aggressive cold calls from what they believed to be an equivalent of the Telephone Preference Service (TPS).

The ICO's Head of Enforcement commented:

"This company clearly knew the law but continued to break it by calling people on the TPS. It's clear some of the people called by this company were very distressed by the calls and as some of the people receiving the calls were elderly or vulnerable this was an aggravating factor. This monetary penalty has been issued to make sure that Cold Call Elimination realise that it is unacceptable to operate in this way. It should also be a warning to other companies that we will act if companies are found to breaking the law.

"It's ironic that the products they were trying to sell should have blocked the very calls they were making."

Lloyds Bank

A theft of a data box from Lloyds Bank resulted in thousands of customers having their personal details stolen. The box contained details of individuals' names, addresses, account numbers and sort codes. It affects customers who opened accounts between 2006 and 2012. Lloyds have contacted all customers who could be affected.

■ EU update



RegulatoryStrategies

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:



www.newgatepr.com

The negotiations on the EU General Data Protection Regulation (GDPR) are ongoing but less smoothly than had been anticipated before the summer break. EU legislators are experiencing difficulties in finding viable compromises for both the Council and the European Parliament as complex issues such as proposals relating to the rights of the data subject (Chapter III) as well as the principles for protecting the personal data (Chapter II) are addressed for the first time.

At the same time, there have been some wider evolutions which impact upon the European data protection framework over the course of September.

On 8 September, the European Commission and the US government finalised the so-called 'Umbrella Agreement' which sets up a comprehensive high-level data protection framework for EU-US law enforcement cooperation. The Agreement covers all personal data exchanged between the sides of the Atlantic for the purpose of prevention, detection, investigation and prosecution of criminal offences, including terrorism.

'Robust cooperation between the EU and the US to fight crime and terrorism is crucial to keep Europeans safe. But all exchanges of personal data, such as criminal records, names or addresses, need to be governed by strong data protection rules. This is what the Umbrella Agreement will ensure' said EU Commissioner Věra Jourová.

The aim of the Agreement is to provide safeguards and guarantees of lawfulness for data transfers, thereby strengthening fundamental rights, facilitating EU-US law enforcement cooperation and restoring trust.

However, enthusiasm over the finalisation of an such important agreement was quickly diminished on 23 September by an Advocate General of the European Court of Justice (ECJ) who questioned in an ongoing court case the validity of the Safe Harbour regime that has governed the exchange of personal data between the two sides of the Atlantic since 2000.

The regime is based on a contract between the EU and the US, in which the EU states that US companies appearing on the US government's Safe Harbour list shall be treated as if they were European companies with regard to data protection. Such a contract is based on a decision of the European Commission recognising the US as a 'safe country' for European data.

Should the Advocate General's opinion be shared by the ECJ, the US would no longer be automatically regarded as a 'safe country' to which European data may be sent freely. As a consequence, national authorities would be entitled to investigate the facts of each individual case, to see if a US company observes the required minimum level of data protection.

Technology groups and trade associations reacted with dismay to the news: 'We are concerned about the potential disruption to international data flows if the court follows today's opinion', said John Higgins of DigitalEurope.

In terms of next steps, negotiations on the GDPR are expected to last until December 2015. While we are getting closer to the finishing line, businesses still have some room for manoeuvre to pursue lobbying activities to achieve an outcome in line with their interests.



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