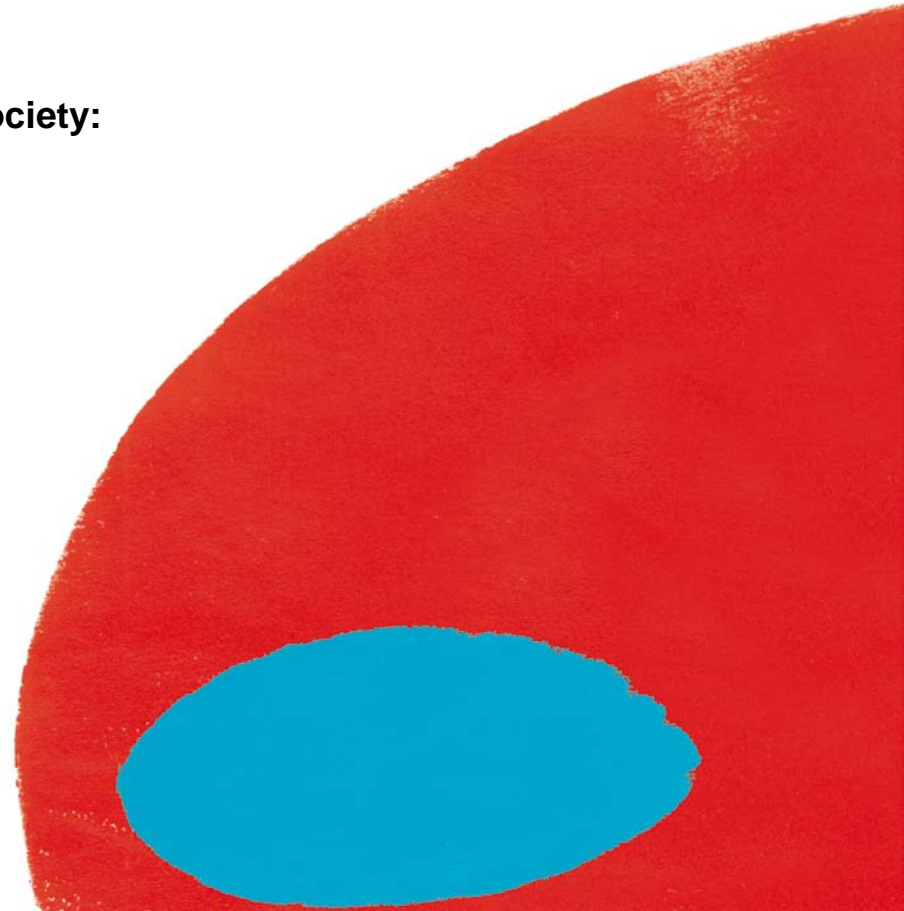


Data Protection Law: Recent UK Developments

The City of Westminster & Holborn Law Society:
International Seminar
12 April 2010

Jonathan Cornthwaite
Partner
IP & Commercial Team
Wedlake Bell LLP
jcornthwaite@wedlakebell.com





Introduction



October 2007



November 2007



Introduction (cont'd)

Public Sector Catastrophe: November 2007

HM Revenue & Customs loses in the post two disks:



- containing personal details of 7 million British households...
- covering 25 million people....
- with an estimated value of £1.5billion to criminals...
- resulting in unreserved apology by the Government to “everyone affected” by the data loss.



Introduction (cont'd)

Private Sector Outrage: November 2009

T · · Mobile[®]

- Unauthorised sale by employee of T-Mobile to third party brokers...
- of millions of items of personal data...
- covering thousands of mobile phone customers.



Introduction (cont'd)

- **Result:** massive “global warming” of the UK data protection regulatory environment
- **Objective** of this presentation is therefore to review some recent (including very recent) developments in UK data protection law in the light of this “climate change”
- The presentation will **not** be reviewing:
 - the nuts and bolts of UK data protection law, or
 - developments in EU data protection law.



Introduction (cont'd)



- The Information Commissioner's Office ("ICO") = the UK's independent authority established (amongst other things) to supervise DP compliance
- Funded by the Ministry of Justice and reports direct to Parliament





1. Fines

The Past £

- July 2006: police employee fined £700 for illegally using a police database to obtain and disclose information about her co-workers
- November 2006: married couple fined £7,500 for unlawfully obtaining and selling personal information
- December 2006: Liverpool City Council fined £300 for data protection breaches
- July 2009: fine of £5,000 imposed on the unauthorised operator of a construction-worker database.



2. Custodial Sentences

- Not yet in force... but in the pipeline – recommended by MoJ Consultation Paper October 2009.
- Up to **2 years** behind bars...
- for the (existing) offence of knowingly/recklessly obtaining/disclosing personal data without the data controller's consent.





3. Assessment Notices and Inspections

- 6 April 2010: New powers by the ICO to serve **assessment notices** on government departments and other public authorities where (for example) they have reason to believe that there is non-compliance with DP principles.
- 6 April 2010: New powers to **enter premises and inspect documents**.



4. Security Measures

- January 2008: ICO issues enforcement notice against **Marks & Spencer Plc** in relation to the **theft of an unencrypted laptop** containing the personal pensions details of around 26,000 employees: requirement on Marks & Spencer to ensure that all laptop hard drives are fully encrypted.
- February 2008: **Skipton Financial Services Limited** in breach of DP legislation in relation to the **theft of an unencrypted laptop** containing personal information of around 14,000 customers: undertaking from Skipton to ensure that personal data held on its laptops is fully unencrypted.
- June 2009: The **British Standards Institute** launches the **first British Standard** on data protection law compliance: BS10012.





5. Surveillance and Data Protection

- December 2009: Establishment of the **National CCTV** (closed circuit television) **Oversight Body** to advise the Government on matters surrounding use of CCTV in public places – to be followed by a permanent CCTV regulator?



- February 2010: UK Government Interim **Code of Practice** setting out requirements **for the use of body scanners** by airport operators at UK airports, requiring an effective privacy policy to protect passengers and inform them of what is happening.



6. *EC v UK*

Online Behavioural Advertising

- “Phorm” = analysis of web surfing to evaluate users’ interests and deliver targeted advertising to them.



- The Phorm scandal: British Telecom admits having tested Phorm technology on 18,000 customers without having informed them: April 2008.



- April 2009: European Commission commences infringement proceedings against the UK in respect of the use of behavioural advertising by ISPs – the proceedings allege that the UK has failed to implement EU law relating to the confidentiality of e-communications. ‘Reasoned opinion’ of EC in October 2009.



7. New “Public Interest” Defence

- A forthcoming defence to DP criminal offences where a person:
 - has obtained or disclosed personal data for **journalistic, literary or artistic purposes** with a view to publication of journalistic, literary or artistic material...
 - in the reasonable belief that what s/he has done was justified as being **in the public interest**.



8. Retention of Old Data

- October 2009: Court of Appeal overturns decision that data relating to five criminal convictions should be deleted from the **Police National Computer**.
- Ruling: there is no statutory constraint as to the purposes for which data can be retained, provided that those purposes are lawful; and the police's reasonable view of what data they need to retain for operational needs should not be lightly interfered with.



9. Cross-Border Transfers of Personal Data Outside the EEA

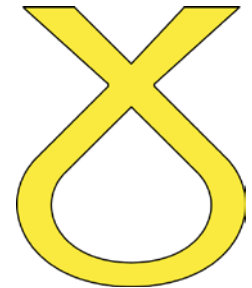
- September 2009: the first authorisation by ICO of “**binding corporate rules**” under a mutual recognition policy.
 - The **Hyatt** Hotels and Resorts business was authorised by ICO to transfer personal data from the UK to affiliates outside the EEA, on the basis of their binding corporate rules.
- 
- The Hyatt logo, featuring the word "HYATT" in blue capital letters with a red arc underneath the letters "A" and "T".
- Under **the mutual recognition policy**, the authorisation of binding corporate rules by a lead data protection authority is accepted by other data protection authorities for parallel clearance of the rules.
 - The countries that have agreed to adopt the mutual recognition procedure include the **UK, Germany**, the Netherlands and Spain.



10. The Forthcoming British General Election



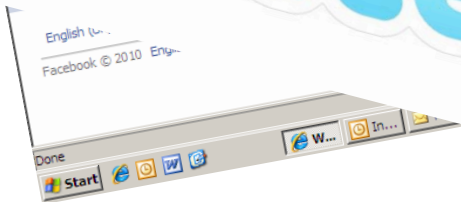
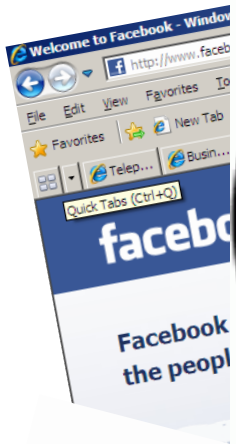
Labour



- The ICO has previously taken regulatory action against the **Conservatives, Labour, the Liberal Democrats** and the **Scottish National Party** for invading people's privacy.
- March 2010: The ICO issued updated **guidance for political parties** covering a range of communication techniques including direct mail, emails, text messages, phone calling and automated phone calls.
- *"I strongly urge the parties to adhere to the ICO guidance, especially as their collective track **record** to date has been **disappointing**"*: the Information Commissioner.



Conclusion



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