



Privacy & Data Protection

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- Telemarketing data prosecution, p.15
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- Enforcement against health sector, p.16

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Durant case in breach of European Directive

According to the European Commission, the United Kingdom is heading for a showdown with Europe on its data protection laws.

Speaking at the 4th Annual Data Protection Compliance Conference in London on 4th October, Philippe Renaudière, Head of Data Protection at the European Commission, confirmed that steps are underway to prosecute the UK at the European Court of Justice unless it takes remedial action to bring it in line with other Member States. "I do think that the interpretation in the *Durant* case is in breach of the Directive," said Mr Renaudière.

According to Eduardo Ustaran, the Conference Chairman, "the European Commission has made its point very clear, so some kind of response from the UK Government is both called-for and inevitable. However, whilst the UK will work hard to reach a suitable compromise, it is unlikely to depart from its much-championed light touch approach to data protection regulation."

The UK, like all 25 Member States of the European Union, is under a legal duty to implement EU laws, including the Data Protection Directive. Where any Member State appears to have imple-

mented a law incorrectly, the European Commission can bring infringement proceedings in the European Court of Justice.

The UK's inadequate data protection regime was drawn to the Commission's attention last year when the Court of Appeal decided the case of *Durant v The Financial Services Authority*. Following that case, in which the remit of the terms 'personal data' and 'relevant filing system' were heavily restricted, the Information Commissioner's Office issued guidance which supported the new narrow definitions.

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Johnson v MDU trial imminent

The long-awaited trial in the case of *Johnson v Medical Defence Union* is due to be heard in the UK High Court in mid-October 2005.

Mr Johnson's case, which will be heard in the Chancery Division, concerns a subject access request as well as a claim for damages and compensation for unfair processing.

Mr Johnson was removed from membership of the MDU without reasons being supplied to him—he alleges that the removal was unfair

within the meaning of data protection law. The MDU maintains that it undertook manual processing at the meeting where the decision not to renew Mr Johnson's membership was taken. Mr Johnson claims that the manual processing was based on prior electronic processing and was, therefore, caught by the law.

A significant aspect of the case is the claim for libel-type damages as a result of unfair personal data processing, in breach of

the First Data Protection Principle. Mr Johnson claims that the unfair processing led to a lowering of his reputation.

Ashley Roughton, Mr Johnson's barrister, told *Privacy & Data Protection* that, "the case concerns the question of damages where the effect of the processing, alleged to have been unfair, causes damage to repute. It is the first case in the United Kingdom where this question falls to be decided under the Data Protection Act 1998.

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