



# Privacy & Data Protection

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- World's biggest data theft, p.14
- Consultation on data retention, p.14
- American Express—consumer tracking patent, p.14
- Child data stolen from hospital, p.16

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## Damages awarded against email marketer

In what may be the highest damages award an individual has received in the UK for spam, an Edinburgh man has successfully claimed damages from a sender of unsolicited commercial email.

Gordon Dick was won his case against Transcom Internet Services Ltd (Transcom) of Henley-on-Thames. The judgement awarded Mr Dick damages and, unusually for a small claim in Scotland, lifted the normal £75 cap on expenses the defender was ordered to pay.

For receiving spam email from Transcom, the court awarded Mr Dick £750 plus 8% interest per annum, to run from 10th

May. He was awarded £618.66 for costs, making a total of £1368.66 (plus interest).

If all 72,000 recipients of this particular spam were eligible to claim the same damages, then the email senders' bill would total over £54 million.

The Privacy and Electronic Communications Regulations 2003 (the UK incarnation of Directive 2002/58/EC) effectively gives individuals the right to not receive unsolicited commercial email, faxes and text messages.

When he was sent such an email by a company advertising anti-spam solutions on their website, Mr Dick wrote to the Transcom

group of companies in Henley-on-Thames run by a Mr William Smith of Reading. He asked them to explain their actions and requested them to cease using his personal data for mailing. Transcom wrote back to him, confirming they were responsible for the email but denying their actions were unlawful. Instead they challenged Mr Dick to take legal action.

Mr Dick gave them a final warning that legal action would follow if they did not make good damage done and give undertakings not to breach the regulations again. Transcom reiterated its challenge to take legal action, so Mr Dick followed their request and filed a

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## ICO names and shames

In a departure from its usual practice, the Information Commissioner's Office has taken the step of publishing the names of 13 organisations that have breached data protection law.

The ICO obtained written undertakings from each of the organisations, which included Natwest, the Royal Bank of Scotland and the Post Office, requiring them to improve certain aspects of their data protection compliance.

Kate Brimsted, data protection lawyer at Herbert Smith, said "The ICO has long bemoaned its limited enforcement powers and, certainly, when you look at Regulators in countries like Spain and France you can understand the sense of frustration. Here, though, is an example of the ICO responding in a creative and highly effective way to complaints and investigations by consumer watchdogs.

"The undertakings given don't really change the legal position. The real sting was the extensive press coverage highlighting security breaches and painful admissions of failure, combined with a certain sense of shock that the ICO was prepared to name names on this scale.

"It's quite possible that we will see more of this in future in areas where consumer groups are active, for example, against

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