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Information Law Update: July 2015

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Introduction

1. This paper addresses key developments in Information law over the past twelve months. It is structured as follows:

    a. Freedom of Information Act 2000 ("**FOIA**") and Environmental Information Regulations 2004 ("**EIR**") – (i) cases that have hit the headlines, and (ii) more 'nuts and bolts' cases that have an impact on practitioners day-to-day; and

    b. Data Protection – (i) headline developments in the world of online privacy and (ii) a look forward to the new General Data Protection Regulation.

(1) FOIA and EIR - Headliners

R (Evans) v Attorney General [2015] UKSC 21

2. *Evans* is comfortably the most high-profile FOIA case of the year, and perhaps of the decade that FOIA has been in force. That is partly because Mr Evans is a journalist who enjoys the full backing of his republican-leaning national newspaper in his campaign to have access to certain of Prince Charles' letters. But it is also because the case raises questions of real constitutional significance: in what circumstances can the executive overrule a decision of the courts?

3. Mr Evans requested disclosure of the letters from various Government departments in 2005. The Departments refused to disclose them, relying on on ss.37, 40 and 41 of FOIA. The refusal was upheld by the Information Commissioner ("**IC**") (in 2009) and Mr Evans' appeal was transferred straight to the Upper Tribunal ("**UT**"). After a six-day hearing, the UT ruled that the letters should be disclosed.[1] The Departments did not

[1] [2012] UKUT 313 (AAC)

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appeal, but in October 2012 the Attorney-General ("**A-G**") issued a certificate under s.53 FOIA, stating the Departments had been entitled to refuse disclosure.

4. Mr Evans sought judicial review of the decision to issue the certificate. His claim was dismissed by the Divisional Court[2] but his appeal was allowed.[3] The A-G appealed, and so the case came before the Supreme Court, nearly a decade after the original request.

5. Where a Government department or the Welsh Assembly is served with a decision that a refusal to disclose (or as the case may be, to confirm or deny) is unlawful, then s.53 FOIA allows an 'accountable person' to serve a certificate within 20 days of the decision, stating that he has, on reasonable grounds, formed the opinion that there has been no contravention of FOIA. Such a certificate renders the original decision of no effect. The question therefore arises – what are 'reasonable grounds' for such an opinion?

The majority view

6. The Divisional Court accepted the A-G's argument that the grounds had to be no more than objectively reasonable. This argument did not find favour with the majority of the Supreme Court, who agreed with Lord Neuberger's assessment of the extraordinary constitutional implications of the s.53 veto:

> *51. A statutory provision which entitles a member of the executive […] to overrule a decision of the judiciary merely because he does not agree with it would not merely be unique in the laws of the United Kingdom. It would cut across two constitutional principles which are also fundamental components of the rule of law*
>
> *52. First […], it is a basic principle that a decision of a court is binding as between the parties, and cannot be ignored or set aside by anyone, including (indeed it may fairly be said, least of all) the executive. Secondly, it is also fundamental to the rule of law that decisions and actions of the executive are reviewable by the court at the suit of an interested citizen. Section 53, as interpreted by the Attorney General's argument in this case, flouts the first principle and stands the second principle on its head.*

[2] [2013] EWHC 1960 (Admin)
[3] [2014] EWCA Civ 254

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7. In short, the grounds for doing something as exceptional as vetoing the decision of a court must in themselves be exceptional if they are to be reasonable. If Parliament's intention was that a veto could be exercised merely because the accountable person disagreed with the court's view, then 'crystal clear' language would be required to that effect – and s.53 fell short of that requirement.

8. What then are the permissible grounds for a s.53 veto? Lord Neuberger approved the formulation of the Court of Appeal that it would require 'a material change of circumstances since the tribunal decision or that the decision of the tribunal was demonstrably flawed in fact or in law'. Although an appeal might be the more obvious way to challenge a demonstrably flawed decision, Lord Neuberger held that there could be circumstances where new evidence or grounds come to the attention of the accountable person that could not found an appeal (¶77).

9. Some of the information sought was environmental information, and the answer under the EIRs was relatively straightforward: Article 6 of Directive 2003/4/EC requires that refusals to disclose environmental information can be challenged before a court whose decisions will be final. The fact that judicial review of a veto is available is not enough; Article 6 requires a full merits review (¶105). The veto cannot be used in relation to environmental information.

The dissenting view

10. Lord Wilson delivered a powerful dissenting judgment. The majority, he held, had not interpreted s.53 but re-written it. In their enthusiasm for the separation of powers they had overlooked an even more fundamental principle – that of parliamentary sovereignty (¶168). While an executive veto of a court's decision on a point of law would be unlawful, 'issues relating to the evaluation of public interests are entirely different' (¶171).

Postscript – one practical issue

11. Not all of the judgment concerns issues of high constitutional principle. It also appears to resolve one practical issue that arises over and again – when considering the public interest for and against disclosure, what is the correct time for assessing the balance?

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12. The orthodox view has, for some time, been that it is at the time of the request, or at the latest the time of the refusal. This was thrown into doubt by the UT in *Defra v ICO & the Badger Trust,* where it was held to be 'an open question' whether the public interest balance was to be assessed at the time of the request/response or, given the *de novo* jurisdiction of the Tribunal, at the time of the hearing.[4]

13. The question (of enormous practical significance in many cases before the Tribunal) was addressed in passing in Evans, where the orthodox position was restated (¶72). The Court went on to set out, in clear terms, the riders to the principle:

> *although the question whether to uphold or overturn […] a refusal by a public authority must be determined as at the date of the original refusal, facts and matters and even grounds of exemption may, subject to the control of the Commissioner or the tribunal, be admissible even though they were not in the mind of the individual responsible for the refusal or communicated at the time of the refusal to disclose (i) if they existed at the date of the refusal, or (ii) if they did not exist at that date, but only in so far as they throw light on the grounds now given for refusal*

14. Although the point was not argued or formally decided in *Evans*, such a clear statement on such high authority is plainly persuasive and will offer a useful reference point for practitioners.

Fish Legal v ICO & United Utilities [2015] UKUT 52 (AAC)

15. *Fish Legal* concerned the tests for a public authority under EIR. The respondents in the two appeals were the IC, the Secretary of State for Rural Affairs, and three privatised water utilities. The case was stayed by the UT pending a reference to the CJEU of questions concerning the definition of a public authority given in Article 2.2 of Directive 2003/4/EC. Following the CJEU judgment[5], the UT reconvened, with interested parties cases raising similar issues (*Duchy of Cornwall and HRH the Prince of Wales v*

[4] [2014] UKUT 526 (AAC) at ¶44-48
[5] Case C-279/12

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Information Commissioner and Bruton and *Cross v Information Commissioner and Cabinet Office)* invited to make submissions on the nature of the test.

16. The UT first rejected a challenge to its jurisdiction by the Secretary of State. Since an appeal under s.57 FOIA is against a decision notice of the IC, and in this case the IC had declined to issue a decision notice on the grounds that no request had been made to a public authority, there could be no appeal against that determination. The UT dismissed this argument, *inter alia* because it would lead to an inequality of arms: while a body could appeal against a positive decision that it was a public authority (which gives rise to a decision notice), a requester would face the more expensive route of judicial review of a negative decision (which does not) (¶37).

The Special Powers test

17. The UT went on to apply the CJEU's analysis of Art. 2(2)(b) of the Directive, where it explained that persons 'performing public administrative functions' are

> *52 […] entities, be they legal persons governed by public law or by private law, which are entrusted, under the legal regime which is applicable to them, with the performance of services of public interest, inter alia in the environmental field, and which are, for this purpose, vested with special powers beyond those which result from the normal rules applicable in relations between persons governed by private law.*

18. The UT found that the water companies enjoyed a range of powers that went beyond those available at private law:

    a. **Compulsory purchase:** even though this power was enjoyed at one remove, since the water companies required the Secretary of State's authorisation, they enjoyed privileged access to the Secretary of State and an enhanced negotiating position by virtue of the power, even if it was rarely used in practice;

    b. **Powers to make byelaws**: these were wider than any landowner's license available at private law, and were backed by criminal sanctions;
    c. Power to enter land: again, these powers are far more general than common law rights of entry onto land (eg to abate a nuisance);

    d. **Hosepipe bans** (ss.76-76C): the familiar powers to impose a hosepipe ban are unlike anything available at private law, and moreover are backed by criminal sanctions.

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The Control Test

19. The CJEU's analysis of Article 2(2)(c) set out the test for 'control' in the following terms:

> *68 […] this third, residual, category of public authorities covers any entity which does not determine in a genuinely autonomous manner the way in which it performs the functions in the environmental field which are vested in it, since a public authority covered by Article 2(2)(a) or (b) of the directive is in a position to exert decisive influence on the entity's action in that field.*

20. The UT noted that there are two elements to that test: the body must (i) operate in fact in a non-autonomous manner, and (ii) do so because a public authority is in a position to control it (¶134). In other words, although the public authority need not actually be exercising its powers of control, the existence of the powers must have a real constraining effect on the body in question (¶135). Furthermore, the test required the UT to look at the companies' overall manner of performing their environmental services: it would not be enough to find control in 'one or two marginal aspects of their business' (¶136). The UT held that *Smartsource* was no longer relevant; it had to construe the issue afresh in light of the CJEU's ruling.

21. The UT was at pains to point out that 'no legitimate business has complete freedom of action': all operate in a framework of legal and commercial constraints. Something more is needed before one can say that they have lost their autonomy (¶142-144).

22. Despite a list of examples of intervention by the Secretary of State, both macro and micro, both potential and actual, the UT was not persuaded that overall, the companies lacked genuine autonomy. It gave considerable weight to the companies status as private companies, their ability to raise capital on the financial markets, and their standard corporate governance structure.

Implications

23. Although the UT declined to give definitive, general guidance on how to answer the question of who is a public authority (as the IC had asked it to do), it has certainly given a very comprehensive demonstration of how to conduct the exercise. The discussion of the control test leaves one wondering whether a fully commercial entity could ever satisfy the

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test, and will be of some comfort to other privatised utilities. They will be less pleased, however, with breadth of the special powers test, summed up thus by the UT (at ¶110):

> *The extent to which the CJEU's judgment will result in bodies being classified as public authorities is unclear and undecided, but potentially wide. […] the reasoning in these cases is potentially relevant to other privatised, regulated industries that deliver a once publicly owned service: electricity, gas, rail and telecoms.*

(2) FOIA and EIR – Nuts and Bolts cases

Vexatious Requests: *Dransfield* (FOIA) and *Craven* (EIR) [2015] EWCA Civ 454

24. The Court of Appeal dismissed two appeals against decisions of the UT that requests were vexatious under s.14 FOIA and (in one of the two cases), manifestly unreasonable under reg. 12 (4)(b) EIR. The judgment offers useful guidance to practitioners facing these issues, even if (or perhaps precisely because) it does not depart from the orthodox position – indeed it endorses the guidance given by the UT in the earlier appeals (subject to one caveat – see below).

25. The key issue in the *Dransfield* appeal was the extent to which a prior course of conduct by the requester could colour the request under consideration. Arden LJ held that it could do, even to the extent of rendering vexatious an otherwise unobjectionable request (as Mr Dransfield's had been). A requester's motive was relevant to vexatiousness (an exception to the 'motive-blind' mantra of FOIA), and previous requests could throw light on that motive, even where the subject matter was not linked. There was no basis for only including past requests that 'infected' the request under consideration because they dealt with related subject matter.

26. That does not mean that motive is the only or even most important factor in determining vexatiousness. Indeed if the request is aimed at disclosure of important information which ought to be publicly available then even a "*vengeful*" request may not meet the test. Arden LJ stressed that the test is an objective one (at ¶68):

> *vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public.*

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27. In relation to *Craven*, the CA held that the objective test of vexatiousness is indistinguishable, in practice, from the test for 'manifest unreasonabeness' under EIR, although the fact that the latter is a qualified exception subject to the public interest requirement in Reg 12(1) EIR might lead to a different outcome in a given case (¶77-78).

28. Furthermore, there is no reason why the cost of compliance cannot be a factor in the unreasonableness of a request under EIR, or vexatiousness under FOIA. The specific cost limit in s.12 FOIA does not preclude reliance on this factor in a more general way under the other provisions. Arden LJ did, however, express an unconcluded view that the cost hurdle may be higher under EIR, by reason of a reference in the Aarhus Convention Implementation Guide (see ¶84).

29. The guidance given by the UT has been confirmed by the CA (see ¶6), subject to one caveat: that the aim of protecting public resources cannot be used to lower the high hurdle of showing vexatiousness (¶72). In turn, the current ICO Guidance[6] is likely to remain a useful guide to the test.

Late reliance on s.12 and s.14 FOIA: McInerney v Information Commissioner and Department of Education [2015] UKUT 0047

30. It is well established that a party may rely on a substantive exemption for the first time before the IC or the Tribunal, both in a case under EIR (*Birkett v DEFRA*[7]) or under FOIA (*Information Commissioner v Home Office*[8]). The right is subject to the case management powers of the Tribunal.

31. Until recently, the position was less clear in relation to the exemptions in Part I of FOIA: s.12 (cost of compliance) and s.14 (vexatious request). There was conflict of authority on the point: compare *Independent Police Complaints Commission v Information Commissioner* (late reliance on s.12 allowed)[9] and *All Party Parliamentary Group on*

[6] ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf
[7] [2011] EWCA Civ 1606
[8] [2011] UKUT 17 (AAC)
[9] [2012] 1 Info LR 427

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Extraordinary Rendition v Information Commissioner & Ministry of Defence[10] (no late reliance on s.12, albeit obiter).

32. *McInerney* has now laid the dispute to rest. Late reliance on both s.12 and s.14 is allowed, subject to the Tribunal's case management powers. The UT could see no distinction between those sections and the Part II exemption that justified a different analysis to that in *IC v Home Office* (¶40).

33. Although the reasoning on the issue of principle proceeded via the authorities dealing with s.12, the principle was only applied on the facts of the case to s.14. The case does not address the question of what costs can go towards the s.12 costs limit. The best view probably remains that given in the *APPGER* case, namely that costs already incurred do not count; the public authority must show that its future costs of compliance exceed the specified limit.

The right to charge under EIR: East Sussex County Council v Information Commissioner (Case C-71/14)

34. The right of local authorities to charge for property searches was long thought to be governed (as the name would imply) by the Local Authorities (England) (Charges for Property Searches) Regulations 2008 ("CPSR"). The CSPR allowed local authorities to charge by reference to staff costs, overheads, and the cost of maintaining information systems.

35. However, the CPSR provides that it does not apply to the provision of any information which is governed by other statutory charging regimes. It is now recognised that such requests are likely to fall under EIR, which allows only for a charge 'that does not exceed a reasonable amount' (Directive 2003/4/EC, Art 5(2)).

36. Previous cases have considered the scope of 'reasonable' charges for property searches. In *Leeds City Council v IC & APPS Claimants*[11], the FTT took the restrictive view that charges could only be made to cover disbursement costs.

[10] [2011] UKUT 153 (AAC); [2011] 2 Info LR 75
[11] EA/2012/0020-21); [2013] 1 Info LR 406

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37. In *East Sussex*, the FTT referred a number of question to the CJEU asking what costs could be included in a reasonable charge. The Advocate General has now delivered her opinion:

    a. A reasonable charge is one which (i) is set on the basis of objective factors that are known and capable of review by a third party; (ii) is calculated regardless of who is asking for the information and for what purpose; (iii) is set at a level that guarantees the objectives of the right of access to environmental information upon request and thus does not dissuade people from seeking access or restrict their right of access; and (iv) is no greater than an amount that is appropriate to the reason why Member States are allowed to make this charge (that is, that a member of the public has made a request for the supply of environmental information) and directly correlated to the act of supplying that information.

    b. No part of the costs of establishing and maintaining the relevant database in may be recovered;

    c. it is not permissible for such a charge also to seek to recover overheads such as heating, lighting or internal services: [they] are not incurred solely in connection with the supply of information in response to a specific request.

    d. A reasonable charge <u>can</u> include the costs of staff time spent on searching for and producing the information requested and the cost of producing it in the form requested (which may vary).

Section 50(4): Home Office v Information Commissioner and Cobain [2015] UKUT 27 (AAC)

38. Section 50(4) FOIA provides that

> *Where the Commissioner decides that a public authority-*
>
> > *(a) has failed to communicate information, or to provide confirmation or denial, in a case where it is required to do so by section 1(1), or*
> >
> > *(b) has failed to comply with any of the requirements of sections 11 and 17,*

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> *the decision notice must specify the steps which must be taken by the authority for complying with that requirement and the period within which they must be taken.*

39. At first glance, it may be hard to spot that the provision imposes a discretion on the IC as to whether to take any enforcement action against a public authority in breach of FOIA. But in *Information Commissioner v HMRC and Gaskell*[12], the UT held that the section should be read as if it included the underlined words '… must specify the steps, if any, which must be taken…' (¶44) It was envisaged that the discretion would only be invoked where disclosure would be 'unlawful, impossible or wholly impractical'.

40. The UT has now exercised the discretion itself in *Cobain*, holding that the appropriate exercise of the discretion in that case was not to order disclosure. *Cobain* was an 'X + Y = Z' case. Z was a figure in the public domain (13, the total number of deprivation of citizenship orders over a given period). X and Y were the figures for deprivations on the only two grounds for making such an order, considered individually. The problem was that X (deprivations on a national security ground) was absolutely exempt, whereas Y fell to be disclosed, but disclosing Y would reveal X, given the presence of Z in the public domain.

41. Although the UT stressed that the discretion should be exercised only rarely, it canvassed a far wider range of factors as being relevant to the discretion – endorsing the list of 10 put forward by the IC (see ¶18). The list raises as many questions as it answers, particularly where the exemption is a qualified one – can the IC really weigh up the public interest all over again when considering whether to enforce disclosure of material he has already decided that the public ought to see? It may be that in practice, the use of s.50(4) is limited to cases similar to Cobain, where it is necessary to prevent disclosure of absolutely exempt information.

The right to request a particular software format: Innes v Information Commissioner [2014] EWCA Civ 1086

42. Section 11 of FOIA provides that

[12] [2011] UKUT 296 (AAC)

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> *(1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely—*
>
> *(a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,*
> *[…]*
>
> *the public authority shall so far as reasonably practicable give effect to that preference.*

43. Mr Innes requested certain data related to 11+ exam results from Buckinghamshire County Council that it held on a database. By a later e-mail, he asked for it to be provided in Microsoft Excel format. In the event, the information was provided in pdf format.

44. Underhill LJ held (after a lengthy discussion) that 'form' in s.11 included 'software format', and that an applicant was entitled to receive information in the software format of his choice, provided that it was reasonably practicable for the public authority to comply with that request. It would not be reasonably practicable if it incurred excessive cost, or breached its software license conditions by doing so.

45. Underhill LJ also held that the 'form' request under s.11 must be made at the time of the request itself – it would create practical problems if a requester could require material to be put into a new format late in the day. It was odd, then, that he was prepared to treat Mr Innes' later request for the information to be in Excel format as a fresh request for the same material, this time accompanied by a s.11 'form' request.

46. Public authorities should now be alert to the need to comply with request for information to be supplied in a particular format, even where the 'form' request is not strictly contemporaneous with the substantive request.

(3) Data Protection – update on online privacy cases

Google Spain and the right to be forgotten

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47. Courts and data protection authorities around Europe, and Google itself, continue to work through the implications of the 'right to be forgotten' following the controversial judgment in *Google Spain*.[13]

48. The Article 29 Working Party published guidelines on the implementation of the judgment in November 2014.[14] In February 2015, Google published its own 'advisory council' report on implementation.[15] One key area of difference include whether links at google.com should be de-indexed, or only links at national domains (google.co.uk, google.fr etc). Recently, French data protection authority has warned Google that it could face enforcement action if it does not apply de-indexing to links at google.com. The debate foreshadows the question of the territorial reach of the new General Data Protection Regulation (see further below).

49. Dispute also rages over whether third parties should be notified of de-indexing. Google takes the view that content owners should be warned of de-linking, the Working Party that they should not 'as a general practice'.

50. A further important question remains unanswered as a result of the settlement of the claim by Max Mosley against Google – whether the right to be forgotten requires an Internet Search Engine not only to de-index search results on request but to go further and block all access to the material in question. Google applied to have the claim struck out on the basis of several defences available to intermediary 'internet society services' (ISSs) under Part IV of the E-Commerce Directive (Directive 2000/31/EC), both limitations on liability and the exclusion of any obligation to engage in general monitoring. The failure of the strike out application[16] and subsequent settlement means that the interaction of the E-Commerce Directive with the Data Protection Directive in these areas remains an open question.

CG v Facebook & Anor [2015] NIQB 11

[13] Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González, Case 131/12
[14] ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp225_en.pdf
[15] drive.google.com/file/d/0B1UgZshetMd4cEI3SjlvV0hNbDA/view
[16] *Mosley v Google Inc*. [2015] EWHC 59 (QB)

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51. Meanwhile, the Northern Irish High Court has ruled that the e-commerce Directive did not absolve Facebook of liability for postings about which it had been notified. The case was brought by a convicted paedophile, who had been subjected to abuse, including physical threats, on Facebook.

52. The court held that the Regulations only immunise the relevant information society service (ISS) against liability if the ISS has no actual or constructive knowledge of the unlawful activity on its site or, if it has acquired that knowledge, it acts expeditiously to remove or disable access to the relevant information. Facebook could not rely on the Regulations in the present case because, after being notified of the relevant postings, it could not show that it had acted expeditiously to remove them or plausibly argue that it did not know that they were unlawful.

Vidal-Hall v Google [2015] EWCA Civ 311

53. The claims in *Vidal-Hall* concern the automatic collection by Google of information about the internet usage of Apple Safari users. This is known as "browser generated information" or "BGI". The information is used by Google to more effectively target advertising at the user.

54. To date the proceedings only concern the question of service out of the jurisdiction (on Google Inc), but unsurprisingly, given the importance of the issues at stake for Google, they are being fought all the way. The Supreme Court is currently considering an application for permission to appeal against the CA decision.

55. As a result of the interlocutory nature of the proceedings, the core issues – of whether the BGI is personal data and whether Google's processing of that data is unlawful – have been held to be no more than arguable. But the case has already had a dramatic, practical impact by its treatment of s.13(2) DPA.

56. None of the Vidal-Hall claimants claims to have suffered pecuniary damage. The claims are for distress only. The CA held that the word 'damage' in Art 23 of the Data Protection Directive had to be given an autonomous EU law meaning (¶72), and had to be construed widely. The legislation was primarily designed to protect privacy not economic

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rights and it would be strange if data subjects could not recover compensation for an invasion of their privacy rights merely because they had not suffered pecuniary loss.

57. Section 13(2) of the DPA, by contrast, clearly bars damages for distress in the absence of pecuniary loss. It is impossible to read down this provision to be compatible with the Directive: it can only have been intended to impose the higher test (¶92-93).

58. The alternative, which the CA adopted, was to disapply s.13(2) on the grounds that it conflicts with the rights to private life and data protection enshrined in articles 7 and 8 of the EU Charter of Fundamental Rights. Article 47 of the Charter requires there to be an effective remedy for a violation of the rights and freedoms contained in the Charter, and Article 47 has horizontal direct effect, following the earlier CA decision in *Benkharbouche v Embassy of Sudan*.[17] The result was that disapplying s.13(2) was the only way in which it could be made compatible with EU law (¶105).

59. The demise of s.13(2) has major implications for data controllers, who can expect a significant increase in claims for breach of the DPA, now that such claims can be founded on 'mere' distress. Almost any breach of the DPA could arguably give rise to some measure of distress. Data controllers would be well advised to review their procedures

(4) Data Protection – General Data Protection Regulation

60. Negotiations continue towards an updated and harmonised General Data Protection Regulation ("GDPR"). The proposal has entered the trilogue stage of three-way discussions between the Parliament, the Commission and the Council of Ministers. The expectation remains that the new GDPR will be finalised by the end of 2015.

61. Key themes of the GDPR include:

    a. The One Stop Shop, for both businesses and individuals. By virtue of a harmonised Regulation (replacing the Directive), companies will only have to deal with one single supervisory authority, not 28. By contrast individuals will only have

[17] [2015] EWCA Civ 33

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to deal with their home national data protection authority, in their own language - even if their personal data is processed outside their home country.

b. The same rules will apply to all companies, regardless of their place of establishment, when they do business on European soil.

c. Enhanced privacy rights: the right to be forgotten will be enacted (although its precise boundaries remain open for discussion); software will be required to apply privacy setting by default

d. Stronger enforcement, including enhanced powers of national Data Protection Agencies and huge fines (although the latest proposal favours the more modest penalties of up to €1 million or up to 2% of the global annual turnover of a company, compared to 5% of turnover in earlier versions).

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6 July 2015

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