

FIRST UK BAN ON DATA EXPORTS IS TO NAMED COMPANIES IN USA

The UK Data Protection Registrar (DPR), Eric Howe, for the first time has banned the transfer of personal data to named corporations in another country, in this case to the USA. This Transfer Prohibition Notice took effect in December, 28 days after it was issued to "Winsor International Ltd," giving the company this time to appeal to the Data Protection Tribunal. After this period had elapsed, and the company had not appealed against the Notice, the ban went ahead. This was the first time, in over 3 years in which the DPR has had the power, that he has taken such action.

The Registrar served a Transfer Prohibition Notice under Section 12 of the Data Protection Act to take effect on 3 December 1990 on Winsor International Limited. The Notice forbids the transfer of personal data held by Winsor International Limited, namely names and addresses of individuals for the purpose of direct mail to:

- The Astrology Society of America Incorporated;
- International Reports Publishing Incorporated;
- Harvard Square Lottery Symposium Incorporated;
- Lourdes Water Cross Incorporated;
- Win With Palmer Incorporated;
- International Marketing of the USA; and
- Mr Ben Buxton of New Jersey.

The grounds for serving the Notice were that the Registrar was satisfied that this transfer would be likely to contravene or lead to a contravention of Principles 1, 2 and 7 of the Data Protection Act (see over).

Background

At the time when the Transfer Prohibition Notice was served, the United States Postal Service was seeking a Court Order in the district of New Jersey to restrain the activities of both Mr Buxton and his companies. The allegation of the United States Postal Service was that Mr Buxton and his companies, were defrauding consumers through false and misleading promotions of horoscope, lottery winning systems, religious trinkets and other products. After the Transfer Prohibition Notice was served, the Registrar's Legal Adviser was informed that the US Postal Service had won the Court Consent Order on the lines it had requested.

Promotions of horoscopes, religious trinkets and some other products have been verified as having been mailed to consumers in the United Kingdom.

It has been established that the names and addresses of consumers in the United Kingdom have been provided to Mr Buxton and his companies by Winsor International Limited.

The proceedings in the United States Courts will not restrain Mr Buxton from trading in the United Kingdom.

The Registrar is advised that the mailings by Mr Buxton's companies show breaches of Section 1 of the Trade Descriptions Act 1968; and the Mail Order (Transactions) Information Order 1976 and may involve possible breaches of Section 14 of the Trade Descriptions Act 1968; and Section 21 of the Consumer Protection Act 1987.

The Registrar has taken the view that the activities of Mr Buxton and his companies may properly be regarded as unlawful under both UK and US jurisdiction.

The Registrar has had regard to all the other matters set out in Section 12 of the Data Protection Act (see box) and has served a Transfer Prohibition Notice in accordance with his statutory powers.

Section 12 - Extracts

12 (1) The Registrar may serve a person with a notice "prohibiting him from transferring the data either absolutely or until he has taken such steps as are specified in the notice for protecting the interests of the data subjects in question."

12 (2) "Where the place to which the data are to be transferred is not in a State bound by the European Convention the Registrar must be satisfied that the transfer is likely to contravene, or lead to a contravention of, any of the data protection principles."

12 (4) "In deciding whether to serve a transfer prohibition notice the Registrar shall consider whether the notice is required for preventing damage or distress to any person and shall have regard to the general desirability of facilitating the free transfer of data between the United Kingdom and other states and territories."

The Data Protection Principles - Extracts

The Data Protection Principles are a fundamental part of the Data Protection Act and are based on the Council of Europe Convention on Data Protection. The Principles reflect good practice and the Act requires the Registrar to promote them and data users to follow them. The Registrar can serve an Enforcement Notice or a Transfer Prohibition Notice on data users who contravene any of the Principles.

In the Winsor International case, the following Principles were cited:

1st Principle: "The information to be contained in personal data shall be obtained, and personal data shall be processed, fairly and lawfully."

2nd Principle: "Personal data shall be held only for one or more specified and lawful purposes."

7th Principle: "An individual shall be entitled -

(a) at reasonable intervals and without undue delay or expense -

(i) to be informed by any data user whether he holds personal data of which that individual is the subject; and

(ii) to access to any such data held by a data user; and

(b) where appropriate, to have such data corrected or erased."
