

THE UK REGISTRAR'S POLICY ON COMPLAINTS, INVESTIGATIONS AND PROSECUTIONS

Over the last year, the pace of enforcement action under the UK's Data Protection Act has quickened. Cases are being heard more frequently by the courts (30 in the year to May 31st 1990), the first case has been heard in a Crown Court (the Halifax case), appeals against Enforcement Notices are being heard by the Data Protection Tribunal (the Community Charge, CCN and other credit information cases), and the first Transfer Prohibition Notice has been served. It is, therefore, timely for Privacy Laws & Business to give an insight into the Registrar's procedures and policies on complaints, investigations and prosecutions.

The Registrar's supervisory legal powers are defined in the Data Protection Act. He has statutory duties and statutory powers. His basic aims are to achieve:

adherence to the Principles

proper registration with powers to prosecute any person who processes personal data outside of the terms of that registration

consideration of complaints.

Statutory powers (issuing notices) and legal action (prosecution) are used in parallel in helping him achieve his objectives. But legal work is only part of a broader enforcement strategy.

Statutory Notices

He can serve three types of statutory notices:

- i) Enforcement notices
- ii) Transfer prohibition notices
- iii) De-registration notices

Serving a statutory notice is a way of upholding the Data Protection Principles which serve to defend the rights of individuals about whom data is being used. A statutory notice can be served only on a registered data user, and only in the following circumstances:

- i) Enforcement notices for a breach of a Principle
- ii) De-registration notices for a breach of a Principle which cannot be corrected by enforcement action
- iii) Transfer prohibition notices for a breach of Principle outside the UK which cannot be corrected by any other action

If a data user does not agree to comply with a statutory notice, he may appeal to the Data Protection Tribunal, and in that event, the notice is suspended until the Tribunal reaches its decision.

Prosecutions

The second form of legal action open to the Registrar is prosecution. This can be for:

- i) registration offences
- ii) breaches of statutory notices, and
- iii) warrant and miscellaneous offences

The Registrar's prosecution powers provide him with a sanction for the registration offences and for breaches of notices, and can be deployed against data users, senior managers and individual employees.

The specific legal action the Registrar chooses will be determined mainly by the specific nature of the case. He cannot consider issuing a statutory notice in a registration case and he cannot consider prosecution in a case on a breach of Principle.

The Registrar's Compliance Strategy

These legal actions are part of a wider compliance strategy involving information, advice and support, carried out by the Policy Department and the separate Complaints and Investigations Department.

Policy Advice and Compliance Officers have regular contacts with data users. They offer advice on how to comply with the Principles when, for example, they meet trade associations and attend conferences. If data users refuse to respond to this advice, they may face legal action.

The **complaints and investigations department** has grown larger over the last year or two (PL&B 'August '90 p.27). Approximately 60% of complaints can be resolved by providing information, 14% are dropped by the complainant or simply do not come within the scope of the Data Protection Act.

Approximately 26% of complaints present problems which can be tackled by the Office of the Registrar. The Officer dealing with the case must first consider whether the complaint is a question of Principle, or whether it is a registration problem, or whether it covers both. Often it is a question of both. Relatively few complaints or policy cases lead to formal legal action.

Decision-making on whether legal action is appropriate and, if so, the type

The Registrar will conduct a **prosecution** only if a case passes two hurdles. The first step is to assess whether the the evidence is sufficient

to bring a case in the criminal court. If so, the next question is whether a prosecution is appropriate following the Attorney General's published guidelines. For example, special care would be taken before prosecuting a juvenile, or someone who was sick or old. The Registrar would also consider the consequences of a prosecution for an individual or for a company.

The first step in issuing a notice is to prepare an **enforcement** report with the objective of making sure that the Registrar takes a decision based on accurate information which reflects both sides of the case. The report also refers to relevant policy documents, guidelines and legal advice. The report gives advice on whether the Principles have been breached, and if so, recommends appropriate supervisory action. Enforcement reports also aim for a consistent approach across different sectors.

If the Registrar considers that supervisory action is necessary, he will serve a **preliminary notice** on the data user, which is a warning and an opportunity to resolve the matter without formal legal action. A preliminary notice states the Registrar's view, and the factors he has taken into account. It declares that unless the data user can make a good counter-argument the Registrar will be taking enforcement action within a certain period. The notice usually gives the text of the proposed enforcement notice, and invites the data user to present his case, usually in writing but it may be at a hearing.

Usually, the preliminary notice gives the data user an opportunity to come to an agreement with the Registrar so that the problem is often resolved by a promise to adopt a new policy. If the preliminary notice does not achieve this effect, the Registrar may serve an **enforcement notice**.

Clearly, the two areas of formal legal action are linked parts of an overall strategy to achieve compliance with the Act.

Principles Guiding the Registrar's Priorities for Legal Action

The Act limits the type of legal action which the Registrar can deploy. But on enforcement, he has to consider not only whether action is appropriate but also the scope of that action which should be taken in a specific case.

Section 10 gives the Registrar wide discretion in framing his notice for enforcing the Principles. He must decide whether the notice should deal only with the case of the individual who made the complaint or with the data user's complete operation; and when it should enter into force. The Registrar will take into account the nature of the system and how long the system has been in operation. He will also assess the extent to which relevant guidance and information on correct data protection procedures are available. Compliance with the Principles can be built into systems. The Registrar will not be sympathetic to organizations which regard data protection as an irrelevant afterthought to their computer system.

This is an edited version of the presentation given by Rosemary Jay, the Data Protection Registrar's Legal Adviser, to the Privacy Laws & Business Annual Conference on September 12th 1990, in Cambridge.