

advertising campaign conducted on behalf of the Registrar's office in Scotland, the Midlands and the North of England, as well as on satellite TV. During the four weeks of the campaign, complaints were being received at a rate close to 29,000 a year. The campaign portrayed four examples of the kind of complaint which is commonly received and investigated by the Registrar's office. They related to credit reference, vehicle licensing records, criminal records and financial records.

Credit referencing complaints come highest on the list this year, and amount to some 63% of the total number of complaints. Following the pattern for the past few years, complaints about unsolicited mail have continued to fall.

Amongst the many other issues covered in the Registrar's report are:

- developments in local government,
- the finance sector,
- direct marketing,
- telecommunications,
- data security and
- data matching.

**Ninth Report of the Data Protection Registrar HMSO HC 736. Price £13.25p**

This report was written by **Bojana Bellamy**, a Privacy Laws & Business researcher

---

## **HIGHER COURTS INTERPRET CONTROL AND USE OF DATA**

---

*Prosecutions undertaken by the Registrar have virtually doubled. But the most significant innovation in the past year is UK Data Protection Act cases heard before the higher courts.*

**Data Protection Registrar v. Francis Joseph Griffin, Queens Bench Division**

On Monday 22 February 1993, the High Court of Justice, heard an appeal by the Registrar against a decision taken by the

Kingston-upon-Thames Magistrates on 1 June 1992. The Magistrates' Court had found the defendant not guilty of holding personal data contrary to Section 5(1) of the Act.

Mr Griffin, the defendant, was a self-employed accountant whose business was the preparation of accounts for clients. He owned his own computer and worked from home. He prepared and dealt with the accounts of clients. His method of working was to receive clients' accounting information in written form through the medium of invoices and other paper records. He would then use this information in a spreadsheet computer programme from which he would derive company accounts or private accounts for submission to the Inland Revenue and Customs and Excise for the purpose of VAT, Corporation Tax and Income Tax. He had never been registered under the Data Protection Act. When he was interviewed and asked whether he controlled the content and use of the data, he said that he did.

The case turned on whether Mr Griffin did actually control the content and use of the data on his computer or whether his clients did so. If Mr Griffin did not control the data, he would not be a data user and would not have to register; if he did control them, then he was liable to register.

Mr Griffin argued that he could not be said to exercise control as he had no right to use the data in any other way than to produce his clients' accounts. Although he manipulated the data to produce the accounts, that did not amount to control.

The Registrar contended that, although there were restrictions on the use of the data in terms of contractual and professional limitations, Mr Griffin still controlled the data within the meaning of the Act. He had a power to manipulate the data and as that manipulation involved the application of his professional skill, judgement and discretion, it went beyond merely acting on instructions given to him and he should be said to control the data.

The Court dealt with the specific question as to whether an accountant who receives "raw" information from his clients, which he puts on

computer and processes to produce accounts for other bodies, is a data user. The Court also dealt with the wider question of whether a person can be a data user where there are contractual limitations on his power to use the information he receives.

**The judgement: Mr Griffin was a data user as he controlled the content and use of the data.** The Court also agreed that the fact that there are restrictions placed upon the use of information in the hands of a person does not stop that person from being a data user. Therefore, the fact that Mr Griffin was not free to use the data for his own purposes did not stop him from being a data user.

The Court gave weight to the fact that Mr Griffin did not act for one client alone; he acted for a number of clients and the relevant collection of data to be considered, therefore, was the collection of the accounts of all the clients. Only Mr Griffin knew of all the data which comprised the collection and had the ability to influence it. The Court also attached weight to the fact that Mr Griffin decided what information should be recorded as data and how the data should be manipulated so as to bring the accounts into existence.

On the Registrar's behalf, Counsel asked the Court not to refer the case back to the Magistrates' Court for sentencing. Without prejudice to the appeal, Mr Griffin had registered under the Act subsequent to the proceedings in the Magistrates' Court.

#### **Regina v. Brown - Court of Appeal Criminal Division**

On 28 May 1993, the Court of Appeal heard an appeal by Gregory Michael Brown against his conviction at Maidstone Crown Court on 10 March 1992. Mr Brown, a police officer, had been convicted on one count of attempting to use, and another count of using personal data for a purpose other than the registered policing purpose. He was fined £500 on each count and ordered to pay £1,750 prosecution costs. The prosecution was brought by the Director of Public Prosecutions (DPP), the Head of the Crown Prosecutions Service which is the body

responsible for prosecuting policemen. The DPP maintained that Mr. Brown was using or attempting to use data stored in a police computer for a private debt collecting company with which he was associated.

**The judgement: use of data means going beyond merely looking at it.** The Court of Appeal decided that accessing and viewing data on a computer did not constitute "use" for the purposes of section 5(2)(b) of the Act.

Section 5 (2) states that:

"A person in respect of whom such an entry is contained in the register shall not -

(b) hold any such data, or use any such data held by him, for any purpose other than the purpose or purposes described in the entry."

The court considered that for the accused to breach section 5(2)(b), it was necessary to take some steps beyond merely looking at the data on the computer screen, to making some use of the information within the ordinary meaning of that word, for example, in his own business.

Accordingly, the Court allowed the appeal. However, as the Court recognized that its interpretation of "use" in this context is a point of public importance, it gave permission for the Director of Public Prosecutions (DPP), Barbara Mills, to appeal to the House of Lords. On December 23rd, the DPP restated her case when formally requesting permission to appeal to the House of Lords.

---

The Data Protection Registrar was not a party to the case. However, a House of Lords decision may lead the Registrar to recommend a change to the law.

The Crown Prosecution Service tells *Privacy Laws & Business* that Mr. Brown will not need to be represented nor will he suffer a penalty as a result of any appeal to the House of Lords. It is a matter of public interest that interpretation of the term "use" in the Data Protection Act should be clarified.