



First private sector employee prosecuted by UK Registrar

Data Protection Registrar (DPR) v. Victoria Davidson involved the disclosure by a Woolwich Building Society branch manager of personal data to two persons who, the DPR argued, fell outside the classes of persons covered by the WBS's register entry - namely a tenant of the data subject and the letting agent of the data subject. The specific allegation was that the employee had told each that the data subject was in arrears with her mortgage. The employee was therefore summonsed in respect of two disclosure offences contrary to s5(2)(d) of the Act.

The Magistrates at Tunbridge Wells dismissed the allegation in respect of the disclosure to the letting agent because they felt that, although there was a separate category on the registration form for "agents of the data subject" which had not been ticked by the Woolwich, "letting agents" might still be covered by "other professional advisers," which the Woolwich had completed.

The Magistrates had no difficulty in finding that the Woolwich were not registered for disclosures to tenants of a data subject and that the disclosure by the employee was committed "knowingly or recklessly."

The case was not controversial. There were no arguments of law and in any event a decision by

Tunbridge Wells Magistrates on the law would not be binding on any other court.

Notes for Data Protection Officers

Although the Woolwich had produced model written guidelines on protecting personal data for consideration by their employees, those guidelines did not seem to be the subject of any detailed training. The employee (who was after all a branch manager) referred to a large manual which was kept at the branch and intermittently consulted. She did not have any detailed knowledge of the provisions regarding data protection. This seemed to be a situation accepted by more senior staff with responsibilities for data protection. I am not sure that it is one that would be acceptable to the DPR and the lack of training may be good evidence of "recklessness" in respect of allegations of s.5(2) offences.

The DPR has been asked to consider making the categories of disclosees on the registration application mutually exclusive so that it will not be possible in future to argue that "other professional advisers" covers "agents" when there is a specific category for agents.

Written by Angus Hamilton, Partner,
J P Malnick & Co., Solicitors, 292/3 Upper
Street, London, N1 2TU. DX 122232 Upper
Islington. Tel: 0171-226 8235 Fax: 0171-609
3951. E-mail: angus@dircon.co.uk OR
100412,2414@compuserve.com OR Link.

A Response from The Woolwich Building Society

The prosecution case against an employee of the Woolwich Building Society, on two counts of disclosing personal data to persons not described within the register entry, has highlighted, in the Woolwich experience, how different interpretations can be placed on the categories in the Registrar's registration form.

The two disclosures made by the employee, namely to a tenant residing in a property mortgaged to the Woolwich Building Society and an Estate Agent letting the property, would be part of that employee's normal business practice when trying to ascertain the whereabouts of a customer. Both these disclosures were taken into account when compiling the register entry.

Due to the Woolwich's obligations to disclose information to a tenant when it is intended to take possession of a property, it was believed that the correct register entry for such a disclosure would be the tenant as a data subject. The thinking that lay behind this register entry was not accepted by the Magistrates at Tunbridge Wells court.

Disclosure to Estate Agents, in their capacity of advising on letting a property, was registered under "other professional advisors" directly related with the data subject. This was accepted by the Magistrates. The Woolwich did not consider the category "agents of the data subject" as it is also related to "employees" on the Registrar's application form.

The lesson to be learnt is that you may believe, with the best of intentions, your register entry is correct, but interpretation of your business processes and the categories in the Registrar's registration form may find you or your staff contravening the Data Protection Act.

Audrey Hill, Data Protection Officer