



cornerstone



barristers

**Data protection claims: how much are they worth and how to approach settlement**

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# Overview



**Understanding  
the claim**

**Valuation  
principles**

**Settlement**



# Understanding the claim

# Understanding the Claim: Causes of Action – UK GDPR



- **Article 82 UK GDPR:** *“Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.”*
- See also **s.168(1) of the Data Protection Act 2018**, which states that *“In Article 82 of the UK GDPR (right to compensation for material or non-material damage), “non-material damage” includes distress”* (and see [Google Inc v Vidal Hall and Others](#) [2014] EWHC 13 (QB) to the same effect regarding claims under s.13 DPA 1998).

# Understanding the Claim: Causes of Action – Misuse of Private Information



- [Campbell v MGN](#) [2002] EWCA Civ 1373.
- Domestic private law manifestation of the positive obligation under ECHR Article 8 for measures that secure a respect for private life by placing limits on the use that bodies can make of information that is private to an individual.
- The cause of action has two elements ([Mckennitt v Ash](#) [2006] EWCA Civ 1714 at [11]): i.) information must be **sufficiently private in nature**, ii.) claimant's rights in use of information **must not be outweighed by defendant's rights of use** (consider public interest and whether there is any contribution to a debate of 'general interest' ([K v News Group Newspapers](#) [2011] EWCA Civ 439)).

# Understanding the Claim: Causes of Action – Breach of confidence



- Essentially three elements ([Coco v A N Clark \(Engineers\) Ltd](#) [1969] PRC 41 at [47]):
  - i.) the information itself must have “*the necessary quality of confidence about it*” (per Lord Greene MR in [Saltman Engineering Co Ltd v Campbell Engineering Co Ltd](#) [1948] 65 RPC 203 at [215],
  - ii.) the information must have been imparted in circumstances importing an **obligation of confidence**, and
  - iii.) there must be an unauthorised use of that information to the detriment of the party communicating it.

# Understanding the Claim: the *De minimis* threshold I



- Applies to claims under [s.13 DPA 1998](#), claims for Misuse of Private Information, and to claims under the UK GDPR / s.168 DPA 2018 (*“the position would appear to apply equally to claims under Article 82 UK GDPR”* (see [William Stadler v Currys Group Limited](#) [2022] EWHC 160 (QB) at [36]).
- See Supreme Court in [Google v Lloyd](#) [2021] UKSC 50: Lord Leggatt refers to the fact that the potential for damages applies to non-trivial claims only: [88], [115], [128], [137] and [138].



# Understanding the Claim: the *De minimis* threshold II



- Adopted in [Rolfe and others v Veale Wasborough Vizards LLP](#) [2021]: *“I understood it to be common ground that the threshold of seriousness applied to s.13 [of the Data Protection Act 1998] as much as to [the tort of Misuse of Private Information]. That threshold would undoubtedly exclude, for example, a claim for damages for an accidental one-off data breach that was quickly remedied.”*
- Applied in [William Stadler v Currys Group Limited](#) [2022] EWHC 160 (QB), which concerned a *“single incident, namely the disposal of the Smart TV without wiping the claimant’s personal data – and matters were remedied promptly.”*

# Understanding the Claim: the *De minimis* threshold III



- Note that in Stadler the Court highlighted that simply because a claim was low value [39]-[40] that would not necessarily mean a breach was trivial [42].
- BUT although the *de minimis* threshold was crossed it would have been disproportionate for the Court to continue in the High Court, and it was **allocated to the small claims track.**
- Consider in terms of **valuation and settlement.**

# Understanding the Claim: A key distinction



- In claims for Misuse of Personal Information it is possible to recover damages even where no loss has been suffered (per [Gulati v MGN Ltd](#) [2015] EWHC 1482 (Ch)).
- Court of Appeal's ([2019] EWCA Civ 1599) position in respect of loss of control compensation reversed by the Supreme Court ([2021] UKSC 50). Rejected submission that [Gulati](#) applied by analogy to DPA 1998 claims [135], and found at [138]:

*“I conclude that section 13 of the DPA 1998 cannot reasonably be interpreted as conferring on a data subject a right to compensation for any (non-trivial) contravention by a data controller of any of the requirements of the Act without **the need to prove that the contravention has caused material damage or distress to the individual concerned.**”*

# Understanding the Claim: The decision in Lloyd - ● ● ● Future loss of control compensation in Article 82 UK ● ● ● GDPR claims? ● ● ●

- Lloyd was a claim in respect of s.13 of the DPA 1998. The relevant provision is now Article 82 (and s.168 DPA 2018). The Court expressly did not deal with the ‘new’ legislation:

*“The meaning and effect of the DPA 1998 and the Data Protection Directive cannot be affected by legislation which has been enacted subsequently, the later legislation therefore cannot help to resolve the issues raised on this appeal, and I shall leave it to one side.”*

# Understanding the Claim: Applying Lloyd



## s.13 DPA 1998

- (1) An individual who suffers **damage** by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller **for that damage**.

## UK GDPR Art 82

- (1) Any person who has suffered material or non-material damage **as a result of an infringement** of this Regulation shall have the right to receive compensation from the controller or processor **for the damage suffered**.

## Recital 85 UK GDPR:

•“A personal data breach may, if not addressed in an appropriate and timely manner, result in physical, material or non-material damage to natural person such as loss of control over their personal data or limitation of their rights [...]”

- Impact on valuation/settlement: how has the claim been pleaded? Is it a claim under Article 82? Is there any evidence of material damage or distress? Even if so, consider whether *de minimis* threshold crossed.



# Valuation principles



# Valuation principles: Halliday v Creation Consumer Finance Ltd [2013] EWCA Civ 333



- £750.
- Incorrect entries made in credit records.
- Single technical error, not attributable to fraud/malicious intent.
- No ongoing consequences [33].
- *“Not the intention of the legislation to produce some kind of substantial award”* [36]
- *Vento* bands not useful.



# Valuation principles: AB v Ministry of Justice [2014] EWHC 1847 (QB)



- **£2,250.**
- Emotional distress arising from extended delay from MoJ responding to SAR following death of C's wife and related post mortem.
- Assessment "*not an easy task*" [56]
- Sensitive information, distress caused as a result key.
- Response was 17 months late. Some data within the request was not disclosed for further six years.

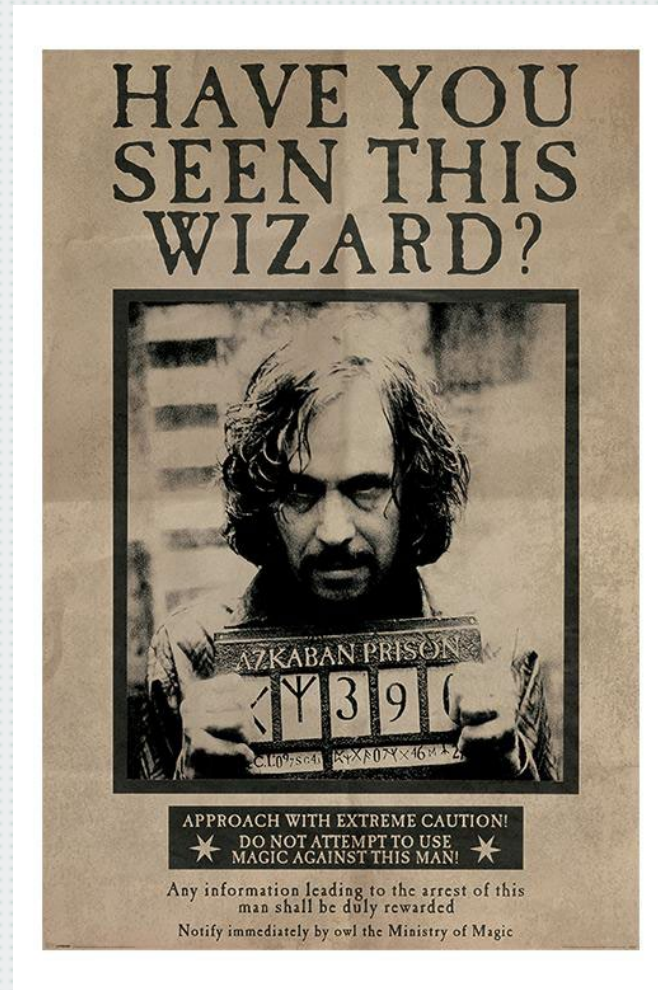




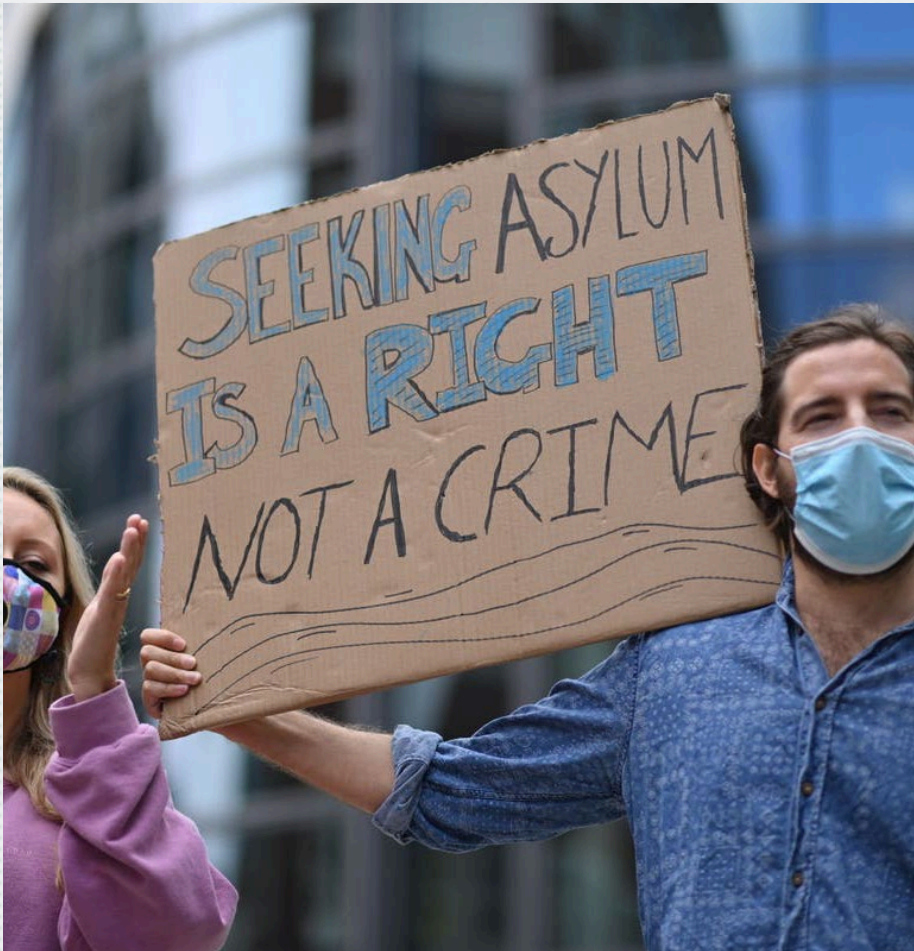
# Valuation principles: Crook v Chief Constable of Essex Police [2015] EWHC 988 (QBD)



- Allegation of rape. *“Most wanted”* press release including name, age, last known address and the words *“wanted for alleged rape in Little Clacton.”*
- No further action.
- Breach of DPA 1998.
- **£5,000** [79] for psychiatric injury.
- **£2,000** [81] for basic damages for the disclosure.
- **£3,000** [83] for aggravated damages.



## Valuation principles: TLT v Secretary of State for the Home Department [2016] EWHC 2217 (QB)



- Joint claims for inadvertent online publication of 1,598 lead applicants for asylum/lead to remain.
- Re: family returns process.
- Disclosure likely to result in distress.
- Awards: **£12,500-£3,000.**
- **£12,500** for C suffering “*serious effects*” resulting in relocation.
- **£3,000** for “*unpleasant shock*” which would have dissipated after a few months [45]-[46].

# Valuation principles: Woolley v Akram [2017] SC EDIN 7



- CCTV monitoring equipment (24 hours a day).
- Court found at [107] that: *“It is difficult to conceive, apart from possibly internal monitoring of the pursuers’ home, how surveillance, and the subsequent processing of the recorded personal data, could be more intrusive than in the present case. The effect on the Woolleys has been profound and destructive.”*
- Damages on a daily basis *“not held out as based on anything but pragmatism,”* damages allowed in the sum of **£10 per day per head**, so for 912 days the total sum was **£8,634** per claimant [117] (the claimants were away for four weeks a year which was subtracted from the number of days).





## Valuation principles: Beyts v Trump International Golf Club Scotland [2017] SC EDIN 21



- Person using public right of access across golf course.
- Staff took pictures of them urinating nearby.
- Claim technically failed, not pleaded as a breach of relevant data protection principle.
- *“Distress arising out of a single event” and “not all the distress was due to the photographing” of the Claimant.*
- **£750** would have been appropriate.

## Valuation principles: ST (A minor) v L Primary School [2020] EWHC 1046 (QB)



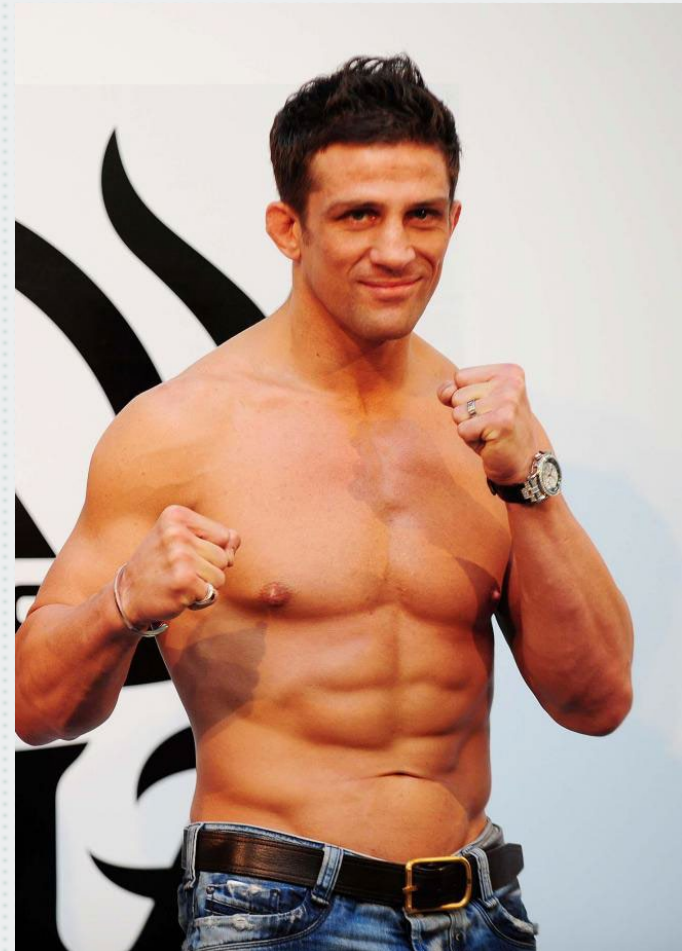
- Letter from headteacher to parents regarding behaviour of student with Down's Syndrome.
- DPA 1998 / MPI.
- No evidence that child suffered **distress**. **£1,500** to reflect *“the sending of the letter itself”* [114].
- In keeping with approach from TLT.
- Mother received **£3,000** to reflect her distress notwithstanding there was an *“absence of medical evidence that she sustained any psychiatric injury as a result of the letter alone”* [117].



# Valuation principles: Reid v Price [2020] EWHC 594 (QB)



- Cage fighter. Former wife disclosed recordings/photographs of him cross dressing and engaging in sexual activity contrary to undertaking.
- Disclosure to at least **50 people**.
- **The more intimate the information and extensive the disclosure, the greater the award.**
- C submits worth **£60,000** [52]. Court highlighted that tariff for general damages in p.i cases placed that as roughly equivalent to loss of an eye. Damages of **£25,000** were comparable to an award for **moderately severe psychiatric harm** [60].
- D's conduct an aggravating factor: *"her behaviour has been persistent, flagrant, arrogant, high-handed, and inexcusable"* [60].





## Valuation principles: Aven v Orbis Business Intelligence Ltd [2020] EWHC 1812 (QB)



- Russian/Ukrainian businessmen operating a firm
- “*Steele Dossier*” regarding relationship between the firm and Vladimir Put, inaccurate personal data and an allegation that they had given/received favours / that they had delivered “*illicit*” cash to him.
- Damages **not just for material loss. Additional damages for distress and reputational harm** [197].
- **£18,000** to the first and second Cs.



Settlement



# Two options



**Fight?**

**Fold?**

# Fight?



**“De minimis”  
breach**

**Allocation  
to small  
claims track**

**Defending the  
claim**

**Low  
value/compl  
exity**

**Admission**

# Fold?



**Rectification**

***Calderbank*  
offer**

**Settling the  
claim**

**Part 36 offer**

**Apology**

# Part 36 offers



**Can be made  
pre-action**

**Must comply  
with CPR Part  
36**

**Costs  
consequences**

# Part 36 offers



**Costs  
protection**

**Uncertainty  
as to  
*quantum of  
costs***

**Certainty as  
to costs  
*liability***

**Pros and cons**

**Inflexible terms**

# *Calderbank offers*



**Certainty as  
to costs (if  
accepted)**

**Less  
certainty as  
to costs (if  
refused)**

**Flexibility  
on terms**

**Pros and cons**

**Less likely to be  
accepted?**

# Confidentiality



**Confidentiality/  
NDA terms**

**Statement in  
Open Court**



**Your questions answered**





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