

THE MORRISONS DATA BREACH JUDGMENT

This is an interesting and important judgment on how and when an employer can be liable to its employees for data protection law breaches caused by a rogue employee.



Five Key Takeaways



GROUP LITIGATION

This is one of the first class-action type claims for data protection law breaches in the UK. The rogue employees' actions impacted almost 100,000 employees, and 5,518 joined together to bring this claim. The claimants here were successful, and this opens the door to potentially enormous liabilities of employers/ data controllers, even where each individual loss is small.



VICARIOUS LIABILITY BUT NOT PRIMARY LIABILITY

Morrisons were held vicariously liable for the criminal actions of its rogue employee. There was a sufficient connection between the rogue employee's employment and his wrongful conduct. The Court did acknowledge that this is a difficult issue, and gave leave to appeal. Other than breach of the seventh data protection principle, Morrisons did not have primary liability for breach of the Data Protection Act 1998 or breach of confidence - it did not authorise or permit the misconduct.



APPROPRIATE TECHNICAL AND ORGANISATIONAL SECURITY MEASURES INCLUDING RETENTION

Morrisons were found to have breached the seventh data protection principle under the Data Protection Act 1998 - the requirement to ensure appropriate technical and organisation security measures to protect the data. Retention of the data, and a lack of clear procedure to address data deletion in this case, was a significant issue and Morrisons should have addressed it. On the facts, however, it was found not to have caused the unauthorised disclosure.



LITIGATION STRATEGY FOR DATA BREACH

If your business is subject to a data breach that results in a notification to a regulator or the impacted data subjects, and could result in subsequent litigation, you will need to take a holistic approach to understand and manage the implications of what you do and say. It highlights the needs for a well rehearsed data security breach incident response plan. Morrisons brought a successful claim for damages against the rogue employee - but their evidence in that claim as to the distress caused to the affected employees could raise its head in the remedies hearing in this current claim.



DAMAGES

This decision dealt with liability only so remedy awaits another day. The claimants will not need to show they suffered financial loss as a result of the breach. They can be awarded damages for the distress caused by the breach.

Actions for employers

i review your incident response plan

ii review your access control and retention / deletion procedures

iii carry out a dry run of a security breach

[If you'd like to read our full briefing on the case, click here.](#)