

The UK 2007 data protection fiasco: moving on from bad policy and bad law

Professor Joe Cannataci

Centre for Law, Information & Converging Technologies at the University of
Central Lancashire

Email: jacannataci@uclan.ac.uk

Dr. Jeanne Mifsud Bonnici Centre for Law, Information & Converging Technologies
at the University of Central Lancashire

Email: jpmifsud-bonnici@uclan.ac.uk

Abstract

A number of commentators were not surprised when the news broke in November 2007 that the personal data of 25 million UK citizens had been lost. This is because Information and Data Protection Commissioners around Europe had been meeting and comparing notes every year for a quarter of a century, during which period the lack of privacy culture in both public and private sector organizations had long been noted. This lack of privacy culture is exacerbated by data protection laws often setting up relatively toothless watchdogs. The UK is a classic example of the minimalist approach to data protection with the Commissioner being required to give prior notice of inspections. The ability to inspect public and private organizations without prior notice is a key power and, in turn, a key deterrent. The UK Commissioner had long lamented that his organization simply did not have the teeth to carry out inspections without warning. Indeed, just 6 months before the November breach, in May 2007 he had given evidence to the UK parliament requesting an extension of his powers to inspect and audit. Following the November fiasco, the UK Commissioner received a commitment from Government that his powers would be increased but is this enough? UK Commissioner Richard Thomas has been comparing his Office's £10 million budget with that of Health and Safety estimated at £890 million and financial services estimated at £269 million. This paper explores the limitations of the law in such circumstances and especially how, even if the law is adequate, policy priorities may be such so as to deny a data protection authority effective teeth through inadequate funding for resources. It also compares the UK position to that obtaining in several other EU

member states in an effort to establish as to whether the UK's plight is unique or endemic or somewhere in between.