



Legal update — October 2018

Employment Newsflash on Morrisons Data Breach Case

Pioneering — Bahrain — Construction — Public sector — Energy — Real estate — London — Tax — IT — Dubai — Manchester — Connecting — Knowledge — Pragmatic — Malaysia — Exeter — Thought leadership — Housing — Agile — Creative — Connecting — Priv — Local government — Manchester — Environment — Focused — Islamic finance — Projects — Abu Dhabi — Corporate finance — Passionate — Employment — Regulation — Procurement — Expertise — Specialist — Planning — Investment — Committed — Delivery — IT — Go — IP — Corporate — Infrastructure — Value — Development — Private wealth — Oman — Governance — Birmingham — Corporate finance — Dynamic — Pensions — Dispute resolution — Insight — Banking and finance — Arbitration — Diverse — Regeneration — Care — Communic

Court of Appeal rules that Morrisons is vicariously liable for employee's deliberate disclosure of personal data of co-workers.

The Court of Appeal has upheld the High Court's finding that Morrisons was vicariously liable for the deliberate and criminal disclosure by an employee of personal data belonging to co-workers in *Various claimants v WM Morrisons Supermarket plc*. This is a concerning decision for employers who will find it hard to avoid vicarious liability in such cases, even if they can show that appropriate measures have been implemented in accordance with data protection legislation.

Morrisons have made clear their intention to appeal to the Supreme Court, but in the meantime it will be particularly important for employers to review their insurance cover for what could be ruinous claims.

The facts

Mr Skelton was employed by Morrisons as a senior IT internal auditor. Just before Morrisons' annual financial reports were announced a file containing the personal details of almost 100,000 Morrisons' employees was posted on a file sharing website by Mr Skelton. This was done deliberately to damage Morrisons' reputation (Mr Skelton's motivations were malicious as he bore a grudge against Morrisons in relation to a previous disciplinary incident). Mr Skelton was imprisoned for various offences including a criminal breach of the Data Protection Act. The co-workers whose data had been disclosed made a group civil claim against Morrisons for compensation arguing that Morrisons had both primary liability for its own acts and omissions and vicarious liability for the actions of Mr Skelton.

The decision

The Court of Appeal upheld the employees' claims against Morrisons, finding it vicariously liable for Mr Skelton's wrongdoing. This was despite the fact that the Information Commissioner had not criticised Morrisons' data security procedures, and the judge who had originally upheld the claim had not identified failings by Morrisons which could have prevented the data breach. There was a sufficient connection between the

position in which Mr Skelton was employed and his wrongful conduct to make it right for Morrisons to be held vicariously liable.

The judgment gives rise to the possibility of claims for damages from all Morrisons' workforce, approximately 100,000 workers. The Court of Appeal considered the potentially significant financial implications this finding could have. It acknowledged that there have been many instances reported in the media in recent years of data breaches on a massive scale caused by either corporate system failures or negligence by individuals acting in the course of their employment. Although these might lead to a large number of claims against the relevant company for potentially ruinous amounts, this was not a basis for not finding vicarious liability. The Court commented that the solution is for employers to insure against such catastrophes, as well as to insure against losses caused by dishonest or malicious employees.



Source: Shutterstock

Implications for employers

Following the decision in the Morrisons case, even an employer which has met its security obligations under the GDPR and Data Protection Act may still be liable for the actions of a vengeful or rogue employee.

Although criminal employees like Mr Skelton are thankfully few and far between, their actions could spell disaster for an unwary employer.

It follows that employers should urgently review their insurance arrangements to check that this risk is

Published by
Trowers & Hamblins

Trowers & Hamblins LLP
3 Bunhill Row
London
EC1Y 8YZ

t +44 (0)20 7423 8000
f +44 (0)20 7423 8001

www.trowers.com

Trowers & Hamblins LLP is a limited liability partnership registered in England and Wales with registered number OC337852 whose registered office is at 3 Bunhill Row, London EC1Y 8YZ. Trowers & Hamblins LLP is authorised and regulated by the Solicitors Regulation Authority. The word "partner" is used to refer to a member of Trowers & Hamblins LLP or an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Trowers & Hamblins LLP's affiliated undertakings. A list of the members of Trowers & Hamblins LLP together with those non-members who are designated as partners is open to inspection at the registered office.

Trowers & Hamblins LLP has taken all reasonable precautions to ensure that information contained in this document is accurate but stresses that the content is not intended to be legally comprehensive. Trowers & Hamblins LLP recommends that no action be taken on matters covered in this document without taking full legal advice.

covered and, if it isn't, take the requisite steps to ensure that it is and that such cover is maintained.

We understand that personal data is a huge asset for your organisations to work effectively. Please look out for our Data privacy and information law forthcoming survey on the impact of GDPR six months on.

October 2018 © Trowers & Hamlins

For more information please contact

Emma Burrows
Partner
t +44 (0)20 7423 8347
e eburrows@trowers.com

Nicola Ilnatowicz
Partner
t +44 (0)20 7423 8565
e nihnatowicz@trowers.com

Rebecca McGuirk
Partner
t +44 (0)121 214 8821
e rmcguirk@trowers.com

John Turnbull
Partner
t +44 (0)1392 612370
e jturnbull@trowers.com

Helen Cookson
Senior Associate
t +44 (0)161 838 2081
e hcookson@trowers.com