

READY FOR THE FUTURE ISSUE 5

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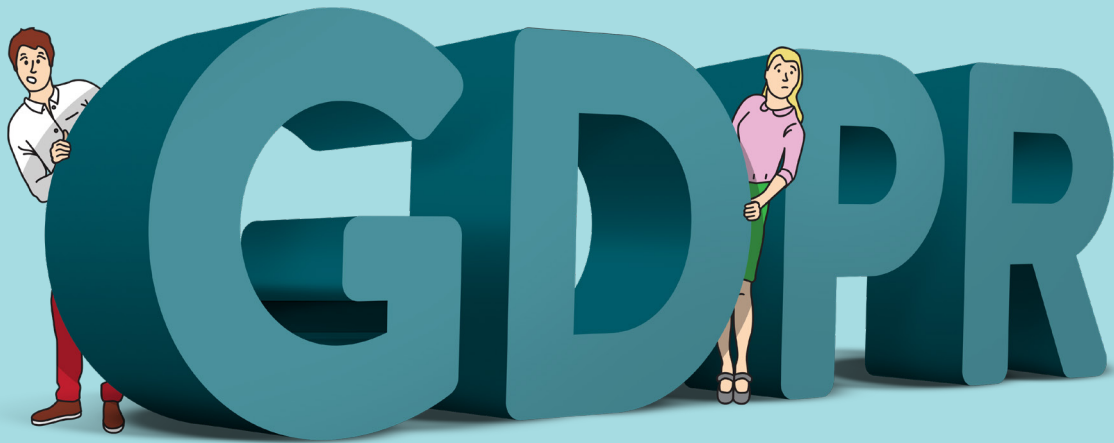
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Data breaches - What you need to do

Under GDPR, every organisation should be adopting strategies and designing processes to ensure the privacy of personal data is protected. In the rush to ensure their organisations were handling personal data compliantly by 25 May, some may have overlooked the need to have an effective internal plan in place to deal proactively with a breach.

A personal data breach occurs when there has been a breach of security, so whether you have emailed medical records to the wrong John Smith, left your laptop containing personnel records unlocked on a train, or your online payment system has been the subject of a ransomware attack, the incident will be considered a data breach.

What should you do if a breach occurs?

The steps to take following a data breach will depend on the nature of the breach, the type and volume of the data, and who has been affected. It is vital that every organisation handling personal data has a robust Incident Management Plan (IMP) in place, before a breach occurs. The core purpose of an IMP is to minimise harm, both to your organisation and to the individuals affected. Failure to do so could significantly impact the reputation of your organisation.

The IMP, as with any business continuity plan, should include details of who the breach needs to be reported to, who will take the lead in coordinating the response to the incident, and name the people and their role in your organisation's response team. The issue may have an impact across the organisation, so identifying who represents each department is important, and your plan should also address the question of when to bring in your lawyers.

All personal data breaches, whether they are serious enough to notify the Information Commissioner's Office (ICO) or not, must be recorded. You should therefore keep a central file that not only contains your Data Protection Policy and the IMP, but a register of each breach, containing the facts, the impact and remedial action taken.

What should the response team do?

Once the response team is established, it will need to implement the IMP and progress through the following five stages:

- 1 Preliminary assessment – identifying the source and nature of the breach
- 2 Containment – if the breach is ongoing, you will need to secure the system to prevent further loss and seek to recover any data affected (from your most recent back-up)
- 3 Detailed assessment – establish how the incident occurred, whose data was affected, how sensitive the relevant data is and what other impact the breach has caused
- 4 Notification – if the breach is serious enough, you must notify the ICO without undue delay and, ideally, within 72 hours of becoming aware of it. You will also have to consider whether you should notify anyone who has been affected
- 5 Prevention – once the initial breach has been dealt with, you need to evaluate if, and how, your systems can be improved to prevent future similar threats or breaches. Consider also if further staff training would mitigate the risk of a future breach. Be aware that persistent breaches, especially those which could have been corrected after the first occurrence, are likely to attract the unwelcome attention of the ICO.



Contact Steven Murray, intellectual property expert
M: +44 (0)7921 498 467
E: smurray@hcrlaw.com

Buyer beware – ignore the at your peril!

Data protection will become an important factor in any M&A transaction because ensuring compliance with the GDPR can be challenging.

How does GDPR affect prospective company M&As?

Because of the increased focus on data and information security under the GDPR, prospective buyers will need to engage in an enhanced and more detailed due diligence process to fully assess a target company's GDPR compliance.

Important areas to question the target company about during due diligence will include:

- registration with ICO – is it correct?
- has there been proper reporting of historic data breaches? (ask for the register)
- are there any pending compliance investigations or inspections?
- have appropriate impact assessments been carried out?
- where necessary, is an appropriate data protection officer appointed

Particular consideration should also be given to the existence of adequate privacy policies, the guidance and training given to employees, and what technical and organisational security measures have been applied – particularly if the target has been dealing with sensitive data.

Depending on the outcome of due diligence enquiries, buyers need to consider specific warranty protection or, in certain circumstances, indemnities against the risk of incurring liabilities for GDPR breaches.

As a seller, what should I consider?

As a potential seller, you will want to be in a position to demonstrate your business is compliant with GDPR. Make sure that you appropriately document and evidence every step taken to ensure compliance and consider mapping how your business handles personal data.

When assessing whether your business is GDPR compliant, the new law means you are responsible for ensuring the compliance of any outsourced data processing services you use. Potential sellers will therefore need to ensure that appointed third party service providers who handle or process personal data on their behalf (e.g. payroll services) are also GDPR compliant.

The large amount of data processed by a business and the multitude of ways in which it is handled means that accurately mapping and understanding how your business uses and processes data is vitally important to ensuring your compliance.

There is no doubt that the new law will bring an increased focus on data protection compliance in M&A. Making sure that your business is compliant and understands the questions that need to be asked and answered will help put you on the front foot in any potential transaction.

If you're involved in, or are considering the possibility of, a future merger or acquisition, you will want to assess and mitigate all the risks associated with a transaction. We're specialists in corporate transactions and can help you achieve the outcome you want.



Contact Peter Raybould, acquisitions and disposals expert

M: +44 (0)7715 060 299

E: pnraybould@hcrlaw.com



What's your passion?

By Dawn Oliver
Head of Wills, Trusts
and Estate Planning
team

I've been practicing wills, trusts and probate law for over 25 years because there's nothing more important to me than helping people with such an important part of their lives.

I spend time really getting to know my clients, visiting them at a time and place that suits them, so I fully understand their situation and can give them practical advice that really helps. My passion is making my clients happy, knowing that I've provided practical advice that gives them confidence, knowing their affairs are in order.

Through my work with individuals, and companies as part of the Wills at Work programme, I know how important wills are to family life, but I also know just how many people put off making one. There's no need to be afraid – my team and I are here to help and make it as simple as possible for you.



Contact Dawn Oliver

M: +44 (0)7721 564 340

E: doliver@hcrlaw.com

“ 60% ”

of small breaches have suffered a cyber security breach, according to research from Marsh.* 99

If you're still unsure what your business needs to do, read Steve's article in this edition or sign up for one of our autumn GDPR events.



Top tips for exporting to new markets

The US, as one of the world's largest economies, is a key potential market for businesses, as shown in our survey of SW Insider readers** – 51 per cent of respondents thought the US would be a good market to target.

Exporting to any new market is not easy, Nicolas Groffman, Head of International, gives his top tips for exporting outside the EU, focusing here on the US.

The lessons of history

The US is the largest export destination for British manufacturers and one of the few countries with which the UK runs a trade surplus; we sell more to Americans than they sell to us. Moreover, SMEs do well in the US market. The size of the population, common language and business practices have historically made the US a friendly export market for UK firms and the same applies, even now.

The downside is the litigious nature of the US. The UK is bad enough but Americans are even more likely to resort to litigation if they feel something has gone wrong.

Another challenge is Trump's promise to bring jobs back to the US, which you would expect to mean 'make more and import less'. But that doesn't seem aimed at Britain yet, especially for products marketed on their "Britishness". Fashion, food, and a host of other items already trade on their British heritage, but engineering and technology doesn't, and it should. British manufacturing and science is seen as both reliable and cutting edge, perhaps the only nation to have successfully branded itself as conservative and inventive at the same time. Some UK industry sectors understand the value of 'Brand UK', but some don't; your product's heritage could be a vital advantage.

At the same time, British firms should consider setting up a US sales office or agency rather than selling directly. Doing this makes your business American and therefore exempt from any policy change that might penalise foreign companies. You might even consider setting up a joint venture with an American firm.

Bear in mind that the Transatlantic Trade and Investment Partnership (TTIP) with the EU is now defunct. So the EU will not benefit from a free trade agreement with the US, but it is likely that the UK will. The Trump administration has hinted at just such a deal, and the UK is much easier to negotiate with than the 27-nation EU.

Did you know ?

New research by the Financial Times shows 759 international treaties need to be renegotiated.***

Renegotiating 759 treaties sounds horrendous. One former UK government lawyer, has been quoted as saying that the nearest precedent he can think of is the "cessation of a country."

Most treaties are cookie-cutter forms that require just a signature, since they are formulaic recognitions of fact. A small minority are required to be negotiated, and that will be difficult. But those are opportunities, since the EU has no equivalent. It failed, for example, to negotiate a Free Trade Agreement with China despite nearly a decade of trying. Mrs May has focused on these opportunities and is on her way to achieving them, despite the obsession of MPs with the EU.

Getting Ready For The Future



Come along to an event hosted by our sector experts – in the autumn, we'll be running a series of GDPR events providing an update on legislation and practical advice to ensure you and your business remain GDPR-compliant. We will also provide our top tips for responding quickly and effectively to data breaches or subject access requests. Register your interest today at <https://www.hcrlaw.com/events/>

Check out our range of GDPR services to help small business owners stay ahead of the game. Find out more at <https://www.hcrlaw.com/insight/gdpr/>

Receive legal updates straight into your inbox by subscribing to Ready for the Future at <https://www.hcrlaw.com/signup>

Get your topic onto our Brexit agenda by emailing campaigns@hcrlaw.com

What you need to know

1 The top 10 industries importing into the US are (according to the British government)

- electrical machinery and equipment
- machinery and mechanical appliances
- vehicles
- mineral fuels and oils
- pharmaceuticals
- optical, photographic, cinematographic, measuring and precision equipment
- furniture, mattresses and soft furnishings
- pearls, precious and semi-precious stones and metals
- organic chemicals
- plastics

2 To avoid litigation, you need to understand US commercial standards and tailor your terms and conditions to those standards

3 Remember the US is not a single national market; it is a federal system. You must treat each state as a separate entity with its own procedures. Compare three or four states before you decide where to focus

4 Consider whether you need to localise your product. For example, it doesn't matter how well your car sells in Europe and how fast it can go – if it doesn't have four cup holders with size inserts, no American will buy it; they like their in-car drinks

5 And don't forget, whilst we might think we share a common language, in the US English is used very differently from here the UK, which could lead to some embarrassing mistakes if not checked carefully.



**Contact Nicolas Groffman,
international expert**

M: +44 (0)7816 592 934

E: ngroffman@hclaw.com



Talk to us

Call us on 0800 910 1189

Email campaigns@hcrlaw.com

We'd love to have a chat.

Sources:

* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415354/UK_Cyber_Security_Report_Final.pdf

** HCR survey conducted March 2018

*** <https://ig.ft.com/brexit-treaty-database/>

Birmingham

63 Church Street
Birmingham
B3 2DP

Cambridge

Compass House
Chivers Way
Histon
Cambridge
CB24 9AD

Cheltenham

Ellenborough
House
Wellington
Street
Cheltenham
GL50 1YD

Hereford

Thorpe House
29 Broad Street
Hereford
HR4 9AR

London

New Broad
Street House
35 New
Broad Street
London
EC2M 1NH

Thames Valley

100 Longwater
Avenue
Green Park
Reading
Berkshire
RG2 6GP

Worcester

5 Deansway
Worcester
WR1 2JG

Wye Valley

Overross House
Ross Park
Ross-On-Wye
HR9 7US