

**DENTONS**

**WEBINAR SERIES**  
KEEPING UP WITH  
CROSS-BORDER CLASS ACTIONS

# **Part 5:**

## **Perspectives on data privacy from Europe and the UK**

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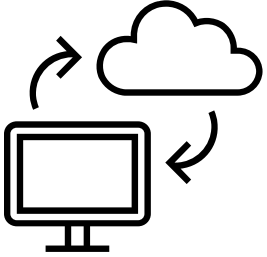
A low-angle, upward-looking photograph of a forest. Tall, slender tree trunks reach towards a clear blue sky, with some green foliage visible at the top. A large, semi-transparent purple shape with a rounded corner is overlaid on the left side of the image, serving as a background for the text.

# **UK perspective**

Privacy class action trends



# From personal data regulation to tech and data regulation



UK

UK DUA Act 2025, e-Privacy  
Regs, OSA, DMCCA, NIS

EU

GDPR, e-Privacy Directive,  
AIA, DSA, DMA, DA, DGA,  
NIS2, DORA...

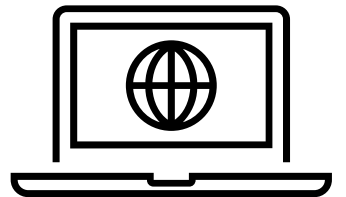
Legal and regulatory complexity

Tech / AI regulation: novel concepts, lack of clarity

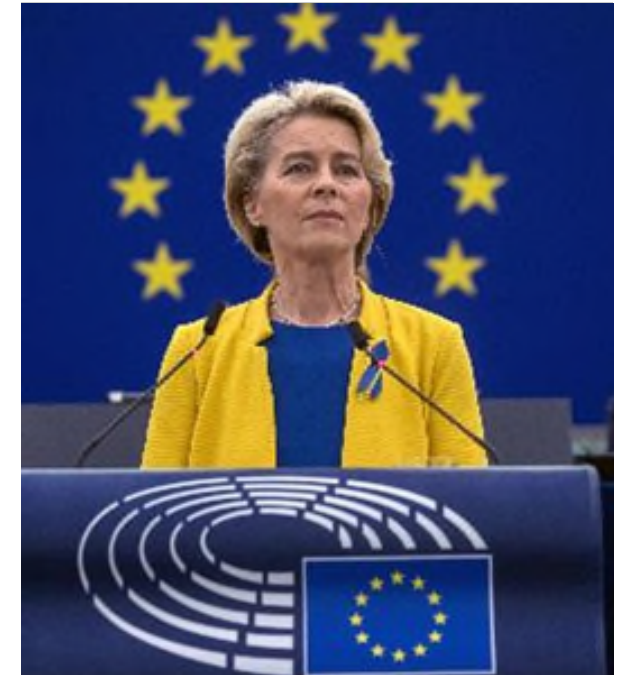
Legal risk flashpoints

Velocity / acceleration risk

Geopolitical risk



# Policy shift?



# Data Privacy Class Actions in England & Wales

## Understanding the evolving legal landscape

Three reasons why the danger level associated with data privacy class actions in England & Wales has subsided over the last few years:



1. Procedural rulings

2. Application by the English courts of materiality thresholds


3. Need for positive actions by defendants in misuse of private information claims

# 1. Procedural Rulings Impacting Class Actions

## *Lloyd v Google* [2021] UKSC 50:

**Facts:** Mr Lloyd attempted to bring a representative ('opt-out') action against Google for unlawfully tracking over 4 million iPhone users' internet activity without consent, seeking damages for loss of control under the Data Protection Act 1998 ("DPA").


**Importance:** Loss of control, without proof of financial loss or distress, cannot give rise to compensation under the DPA, and the need for an individualised assessment of damages makes a representative action unsuitable.



## *Prismall v Google UK Ltd and DeepMind Technologies Ltd* [2024] EWCA Civ 1516:

**Facts:** Mr Prismall brought a representative action against Google and DeepMind on behalf of 1.6 million individuals, claiming misuse of private information after their medical records were used without consent.

**Importance:** The Court of Appeal upheld the decision to strike out the claim, emphasising the difficulty of meeting the "same interest" requirement for representative actions, particularly when individual privacy expectations vary.



## *Cleary v. Marston (Holdings) Ltd* [2021] EWHC 3809 (QB):

**Facts:** The claimant alleged misuse of private information and breach of DPA after a letter intended for him was mistakenly emailed to a colleague, seeking damages.

**Importance:** The High Court ruled that low-value, non-complex claims should be transferred to the County Court, emphasising that such cases do not require High Court proceedings (and therefore significantly restricting the scope for recovery of legal costs).

## 2. Materiality threshold being proactively applied by English Courts

### *Underwood v Bounty UK Ltd* [2022] EWHC 888 (QB):

**Facts:** Expectant mother complains that NHS Trust allows parenting support company access to personal details such as her newborn child's name, DOB and gender.

**Importance:** The Court says that this information was not of a sufficiently serious nature to engage the tort of misuse of private information at all.

### *Rolfe v Veale Wasbrough Vizards LLP* [2021] EWHC 2809 (QB):

**Facts:** Invoice for school fees accidentally sent to the wrong email address. Recipient deletes the email right away and informs the school. Claim for damages brought in the High Court.

**Importance:** Claim summarily dismissed: "In the modern world it is not appropriate for a party to claim ... for breaches of this sort which are, frankly, trivial ..."

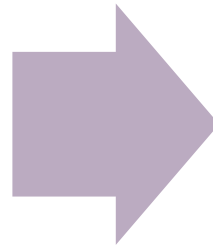


### 3. Positive Actions Required in MOPI Claims

#### *Warren v DSG Retail Ltd* [2021] EWHC 2168:

**Facts:** DSG Retail Ltd experienced a cyber-attack compromising customer data, leading Mr Warren to claim damages for distress due to breach of confidence, misuse of private information, and negligence, alongside a breach of DPP7.

**Importance:** The High Court struck out claims of misuse of private information, breach of confidence, and negligence after a cyber-attack. Data security failures do not constitute positive acts required for such claims. Data controllers are not liable for breaches unless there is a positive misuse or disclosure of information.



#### *Stadler v Currys* [2022] EWHC 160 (QB):

**Facts:** The claimant sought damages after his smart TV was resold without a data wipe, leading to unauthorised use of his Amazon Prime account.

**Importance:** The High Court struck out claims for misuse of private information and negligence, emphasising that failure to act (like not wiping data) is not a positive misuse.

# But don't get too comfortable...



## *Gormsen v Meta [2024] CAT 11:*

**Facts:** Dr. Gormsen filed an opt-out collective damages claim against Meta in the Competition Appeals Tribunal, alleging abuse of dominance by imposing unfair data requirements, unfair pricing, and convoluted terms on Facebook users, seeking £2.3 billion in damages.

**Importance:** The Court of Appeal upheld the Competition Appeal Tribunal's decision to certify the claim, highlighting the reformulation of data privacy cases as competition law cases

## *The Austrian Post Case - Case C-300/21:*

**Facts:** A data subject sought €1,000 in compensation for non-material damage after Austrian Post used his data for political advertising without consent, causing upset and loss of confidence.

**Importance:** The CJEU ruled that compensation under Article 82 GDPR requires an infringement, resulting damage, and a causal link, but not a "seriousness" threshold, leaving Member States to determine compensation criteria while ensuring compliance with EU principles.





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# **EU perspective**

Privacy class action trends



# **The Netherlands - key jurisdiction in the EU for privacy class actions I**

- Dutch class action proceedings (WAMCA) allow group representatives to bring claims on behalf of classes of injured parties
- Declaratory judgments, orders and damages are available as relief, including non-material harm
- Opt-out system for injured parties (natural and legal persons) with habitual residence in the Netherlands; opt-in system for foreign injured parties



# **The Netherlands - key jurisdiction in the EU for privacy class actions II**

- Proceedings allow for separate classes of injured parties, subject to overall claim being sufficiently homogenous
- Long-standing experience of Dutch courts with class actions
- Home to major tech firms, creating jurisdictional relevance
- Active ecosystem of established claim vehicles, interest groups and litigation funders

# Conditions for claiming compensation

Under Article 82 GDPR



A GDPR infringement



Actual damage (material or non-material)



A causal link between the two



# Non-material damage under the GDPR

- Article 82 GDPR allows for compensation for non-material damage, even where the harm is **minor**, provided it is **real and proven**
- No additional national thresholds or seriousness criteria may be applied by member states
- National courts are responsible for assessing whether damage has occurred and for determining the appropriate amount of compensation
- Non-material damage compensation is not punitive

# Non-material damage under the GDPR

- Non-material damages awarded in the Netherlands for:
  - Disclosure of sensitive (health) data
  - Data breaches
  - Improper publication
  - Repeated unauthorized access
- Amounts are modest for minor harm, typically in the low hundreds (EUR 250 – 500) per individual
- Critical factors:
  - Nature and sensitivity of data
  - Courts require some objective substantiation: annoyance or vague discomfort is insufficient

# Damages in class actions

- Method of damages calculation of GDPR infringement is left to national member states
- Dutch law allows for compensatory damages only (no punitive damages)
- Abstract damages calculation and estimating damages are allowed *but* how does this relate to the strictly compensatory nature of damages?
- Also - immaterial damages by their nature have an individualized component



# Damages in class actions

The Dutch class action system allows for a hybrid form of damages calculation (Article 1018i DCCP):

- sub-classes of injured parties are created
- taking into account individual circumstances

Level of unpredictability still exists:

- Courts proceed with one class, completely abstracted from individual circumstances (**Airbus case**)
- Courts decide on sub-classes that take (some) individual factors into consideration (**Dieselpgate case**)
- Courts decide on sub-classes and use standardized guidelines on immaterial damages (**Breast implant case**)

# High-profile cases in the Netherlands

## The Privacy Collective vs. Oracle & Salesforce

- Claims over unlawful ad tracking and cookie-based profiling
- Claim amount of approx. €11 billion (€500 per user)
- Status: declared admissible in 2023; substantive phase ongoing

## Consumentenbond & Data Privacy Stichting vs. Meta

- Claims on unauthorized data sharing and lack of user consent
- Claim amount of approx. €750 million (€1,250–€1,750 per user, depending on age)
- Status: Meta held liable in 2023 declaratory ruling; damages quantification phase

# High-profile cases in the Netherlands

## Stichting CUIC vs. TikTok

- Claims for unlawful processing of children's data (focus on transparency, consent, and profiling risks)
- Claim amount of approx. €1.5 billion (€2,000 per child)  
WAMCA claim filed in 2021;
- Jan 2024: Foundations declared admissible for material damages. Non-material damages rejected as insufficiently substantiated and too individualised
- The case is moving toward substantive proceedings



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