

Client Alert: Katie Price loses Data Protection Case

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Last month the former model and Big Brother contestant Katie Price (aka Jordan) lost a data protection action brought against her by cage fighter and fellow Big Brother contestant Alex Reid. The case is interesting not just for the fact that it involves minor celebrities – there are data protection aspects to the case as well.

The case also deals with the use of data protection litigation to handle so-called revenge porn.

What was this about?

Reid and Price met on the TV series Big Brother and in or around 2009 they became a couple. They were married in February 2010 but the relationship unfortunately lasted less than a year and a divorce was finalised in March 2012.

During the relationship, Price made some sex tapes and in September 2011 she gave written undertakings to Reid that she would not publish, disclose or replicate those tapes or any still images from the tapes. She also promised that she would not describe any of the acts performed by Reid on the tapes.

In 2017 Reid sued Price as he said that she had disclosed information relating to the tapes to about 50 people. Interim relief was granted to Reid in May 2018. The order required Price to give up all copies of the tapes (amongst other things). It seems that Price had said that she had complied with that order but she filed a defence in June 2018 effectively denying liability on the basis of Reid's consent. The court then made various directions to both parties and that led to the striking-out of Price's defence in November 2019. An injunction was granted until November 2024 and a hearing was set to assess damages and compensation.

What did Reid complain about?

The court heard evidence that tapes were made in October 2009 at the Mayfair Hotel in London and on or around June 2010 when the couple were staying at the house of two of Price's close friends. It seems that Reid was concerned about the tapes in part because of the sexual activity shown in them and in part as he was shown dressed as his cross-dressing alter-ego Roxanne. The judge said that more information was given to the court on the content of the tapes but it would not be appropriate to put that on the public record.

It seems that Price continued to retain the film or part of it on her phone and showed it at various times to associates including other Big Brother contacts. She also showed elements of the film apparently at the launch of one of her novels and she showed it to approximately 40 people at the filming of a TV show.

Price implied that she had retained the images in part for retaliation. She had been reported as having said:

"When I split up with exes, they've gone on a rampage slagging me off. The only way I get retaliation is I do books, but I don't slag them off, I tell the truth. Now with Alex for example, the amount of stories he's done on me, but he forgets what videos and pictures I have of him. All my friends have seen them, but not once have I ever put them out. One, it would disturb everyone to the grave and number two, they are not flattering, they are disgusting. You look at them and you are disgusted".

What were the legal arguments?

Reid advanced various arguments under the Data Protection Act 1998 (this was pre-GDPR and the passing of the Data Protection Act 2018) saying that his personal data was obtained and the disclosures were made without his consent. He said that Price had not complied with the data protection principles in DPA 1998 (which are more or less the same as those in GDPR and DPA 2018). He also said that Price has continued to hold on to his personal data which included sensitive personal data within the scope of the legislation and that that also amounted to processing in breach of the data protection principles.

There were detailed pleadings which outlined which of the data protection principles had allegedly been broken. Amongst these allegations were that Price failed to take adequate technical and organisational measures (TOMs) to protect the data after it was hacked into or allegedly hacked into by two individuals only identified as Ste Palmer and Ben Byrd. At least one of these individuals seems to have attempted to blackmail Reid. Reid alleged that at least one of these “hackers” could have been working with Price.

What effect did this have on Reid?

Reid said that he had been mocked and denigrated as a sexual deviant and predator. He said that he had sought counselling for stress and anxiety and had seen a number of psychologists and hypnotherapists. He said that he had had therapy for low self-esteem. He said he felt suicidal and “*sick because of her comments*”.

What happened at the hearing?

At the hearing both Reid and his lawyers attended but Price did not. It is well documented that Price has had financial and other troubles although it is not clear why she did not attend court.

How did the Judge approach this?

The judge looked at four different courses of action together including the data protection claims. He looked at earlier cases including the Max Mosley case and said that damages can include compensation for distress, hurt feelings and loss of dignity. He also said that he could take into account any aggravated conduct by the defendant which increases the hurt of the claimant’s feelings. He said that “*damages may be awarded for loss of autonomy or loss of control, the nature of the information disclosed and the degree of loss of control should bear on this aspect of the court’s assessment of damages – the more intimate the information and the more extensive the disclosure, the greater the award*”.

How did the judge assess the amount of damages?

Reid had originally limited his case to £25,000 (in part because of the tiering of court fees). His counsel suggested that on the facts of this case an award of more than £60,000 would be justified. He highlighted to the court earlier cases involving damages of £85,000 and £72,500 and said that Reid’s case was more serious. Reid’s counsel accepted however that they would be limited to £25,000.

The judge did not accept that the cases that Reid’s counsel cited were comparable. He also felt that some of the claims – such as taunts of paedophilia on Reid’s behalf – could not be linked to Price’s actions. Accordingly the Judge ordered Price to pay the £25,000 although given Price’s bankruptcy this is unlikely to be paid.

What about GDPR?

Whilst this case was decided under the old law we can expect a similar result under GDPR. In some respects it is easier under GDPR to claim damages than it was under the old law. In addition the UK DPA 2018 has specific criminal offences which could apply in cases like this such as s.170 DPA 2018 under which a data controller can demand the return of personal data. There is more detail on the criminal offences in DPA 2018 in our alert here <https://www.corderycompliance.com/client-alert-data-protection-act-2018/>

Conclusion

This case shows us that even individuals can be responsible for data protection infringements and sued as a result. It is likely that we will see more data protection litigation of this type come to court in the future.

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