



Privacy & Data Protection

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- Alterations to CAP code, p.15
- E-Privacy Directive—Commission takes action against Member States, p.16

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Naomi Campbell establishes right to privacy

In a landmark ruling, the Supermodel Naomi Campbell has finally won her privacy action against the *Mirror*.

The UK House of Lords, by a narrow majority of 3 to 2, has ruled that Miss Campbell's right to privacy had been breached.

It has been a long haul for Miss Campbell. She won her action at trial before Morland J in the High Court (see *Privacy & Data Protection*, Volume 2, Issue 5, page 1) and was awarded £3,500 in compensation. She then lost her appeal in the Court of Appeal a year later.

The case arose from the publication by the *Mirror*, on 1st February 2001, of an article concerning Miss

Campbell's addition to drugs, and the fact that she was trying to beat the habit. An accompanying photograph showed her arriving at a Narcotics Anonymous meeting—the photograph was taken covertly by a photographer who was some distance away, concealed in a parked car.

The Lords were at pains to stress that a right to privacy, as such, does not exist in English law—the action was decided under breach of confidence—but in reality, the case confirms a right to privacy. Even Lord Nicholls, who dissented in the case, stated that, “the protection of various aspects of privacy is a fast developing area of the law.”

Lord Hope of Craighead, allowing the appeal by Miss Campbell, said that, “despite the weight that must be given to freedom of expression...there was here an infringement of Miss Campbell's right to privacy that cannot be justified.”

Jo Sanders, media litigation solicitor at Olswang, and co-author of ‘Media Law,’ said that, “whilst Campbell is a case very much on its own facts, its importance should not be underestimated. It represents a significant, if subtle, shift in the attitude of the courts towards privacy claims. An action in breach of confidence has now been finessed by a new test for the unlawful disclosure of

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TPS rules extended to business

UK businesses will, from 25th June, have the same right as individuals to block ‘cold calling.’

The impetus for the change came from complaints by small businesses that they could not manage high volumes of direct marketing calls.

UK businesses will now have the choice to opt-out of direct marketing calls by writing to the Telephone Preference Service (TPS) and registering their telephone numbers. They will be given an annual reminder of those numbers in case they no longer need to

be covered.

The TPS was set up in 1999, and direct marketing firms have a legal obligation to check and comply with the list before calling. Failure to do so can result in enforcement action by the Information Commissioner.

The TPS (and its fax counterpart, the FPS) are currently run by the Direct Marketing Association (‘DMA’) under supervision by OFCOM. The contracts to run the preference services are subject to competitive tender every

five years—many people have criticised the decision to award the contract to the DMA, due to the apparent conflict created by its interest in promoting the interests of marketers.

Communications Minister Stephen Timms said, “well targeted phone marketing can be a powerful tool but not all businesses are geared up to this and for small businesses in particular unwanted cold calls can be a real burden.

“Extending the right to

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