



JUDICIARY OF
ENGLAND AND WALES

8 July 2020

SUMMARY

Aven, Fridman & Khan v Orbis Business Intelligence Ltd

[2020] EWHC 1812 (QB)

Mr Justice Warby

1. The Court gives judgment after a trial of this claim for correction of the record and other remedies for breach of statutory duties imposed by the Data Protection Act 1998 (“DPA”). The claimants are three businessmen of Russian and Ukrainian origin who are among the ultimate beneficial owners of Alfa Group Consortium, a Russian financial-investment conglomerate. The defendant (“Orbis”) is an English company, established by two British former public officials, one being Christopher Steele, to provide intelligence and investigative services **[2-3]**.
2. In 2016, Orbis produced the so-called “Steele Dossier”. On 10 January 2017 BuzzFeed News published an online article about the Dossier and made accessible, via a link, sixteen memoranda from the Dossier. This is how the claimants came to know of “Memorandum 112”, a document referring to them **[4-7]**, The full terms of that document are set out at **[7]**.
3. In this action, begun on 4 May 2018, the claimants allege that Memorandum 112 contains personal data relating to them, some of it sensitive personal data, which are inaccurate, contrary to the Fourth Data Protection Principle (“the Fourth Principle”), and which have been processed by Orbis in ways that are unfair, unlawful or otherwise non-compliant with the First Data Protection Principle (“the First Principle”). The claim seeks a declaration that the data are inaccurate, orders for blocking, erasure, destruction and rectification of the data, an order that Orbis inform those to whom it disclosed Memorandum 112 of the inaccuracies, and compensation.**[8]**

Issues

4. The overall legal framework is outlined at **[12- 17]**. The main issues are identified at **[18]**:-

- (1) What is the scope and nature of the personal data relating to the claimants contained in Memorandum 112 (“the Personal Data issue”)?
- (2) To what extent is the processing of those data which was undertaken by Orbis protected by the Legal Purposes Exemption? (“the Legal Purposes Issue”).
- (3) To what extent is the processing of those data which was undertaken by Orbis protected by the National Security Exemption (“the National Security Issue”)?
- (4) Did Orbis process any of the data in contravention of the First Principle (“the Fairness Issue”)?
- (5) Did Orbis process any of the data in contravention of the Fourth Principle (“the Accuracy Issue”)?

The Personal Data Issue

5. The claimants identify five propositions as personal data relating to the claims which are contained in Memorandum 112 **[21]**:
 - (a) That significant favours are done by President Putin for the claimants and vice versa.
 - (b) That the first and second claimants give informal advice to President Putin on foreign policy.
 - (c) That shortly before 14 September 2016, the second claimant met directly with President Putin in Russia.
 - (d) That the First and Second Claimants used Mr Oleg Govorun as a “driver” and “bag carrier” to deliver large amounts of “illicit cash” to President Putin when he was Deputy Mayor of St Petersburg.
 - (e) That the First and Second Claimants do President Putin’s political bidding.
6. The Court finds in favour of the claimants, resolving two disputes about these propositions. It finds that (a) is personal data which relates to the claimants **[23-33]**, and that (d) above is sensitive data, as it contains an allegation of criminal behaviour: **[34- 45]**.

Background/narrative

7. The judgment sets out a narrative of the origins of the Steele Dossier, and what was done with Memorandum 112: **[46- 62]**. The Court finds that:
 - (1) Orbis worked closely with a consultancy in Washington DC, Fusion GPS;
 - (2) Fusion, acting on the instructions of a Washington DC law firm Perkins Coie, contacted Orbis about a job to produce the Steele Dossier;
 - (3) Orbis thereby received instructions to investigate Donald Trump and his alleged links with Russia and Russian officials, specifically President Putin;
 - (4) Perkins Coie was acting on the instructions of one or more persons or bodies at the top of the Democratic Party in the US (“the Ultimate Client”);

- (5) Between June and November 2016, Orbis thus produced the 16 memoranda that were eventually published in the BuzzFeed article;
- (6) Orbis disclosed the memoranda to (a) Fusion (“the Fusion Disclosure”); and (b) the FBI and a limited number of politicians and government officials, including David Kramer (“the National Security Disclosures”): **[51]**;
- (7) Orbis is responsible for those disclosures but not for any access to the Dossier that was obtained by the Washington Post and BuzzFeed via Mr Kramer, or any publication by them, which did not represent processing of data by or on behalf of Orbis **[55- 62]**.

The Legal Purposes Issue

8. The Court rejects Orbis’ case that the Fusion Disclosure was necessary for the purpose of prospective legal proceedings, but finds that it was necessary for the purposes of obtaining legal advice and establishing legal rights; and that this disclosure was therefore exempt from the notification requirements of the First Principle (“the Notice Requirements”), but not exempt from the Fourth Principle: **[63- 73]** (the law), **[74- 78]** (submissions), and **[79- 99]** (assessment).

The National Security Issue

9. The Court finds that the purpose of national security requires that the National Security Disclosures be exempt from the Notice Requirements, but that this purpose does not require any further exemption from the First Principle or any exemption from the Fourth Principle: **[105- 112]** (law), **[113- 118]** (facts), **[119- 122]** (submissions), **[123- 129]** (assessment).

The Fairness Issue

10. The Fusion Disclosure and the National Security Disclosures all satisfied at least one condition in each Schedule, and therefore met the remaining aspects of the fairness requirement: **[131- 144]**.

The Accuracy Issue

11. The four sub-issues under this head are summarised at **[149]**. They are determined by the Court as follows:
 - (1) All the personal data were factual, rather than matters of opinion: **[150- 160]**.
 - (2) The claimants discharged the burden of proving that the data are inaccurate or misleading as a matter of fact: **[161- 174]**.
 - (3) Orbis did accurately record data it obtained from its sources and sub-sources: **[175- 176]**

- (4) Orbis did take reasonable steps to ensure the accuracy of its data in respect of (a), (b), (c), and (e) above: [185].
- (5) But the nature and gravity of allegation (d) above, that the first and second claimants used Mr Govorun to deliver illicit cash to Mr Putin in the 1990s, are different from and far more serious than the other four propositions. This allegation clearly called for closer attention, a more enquiring approach, and more energetic checking. Orbis failed to take reasonable steps in this regard, and to that extent a breach of the Fourth Principle is established: [186- 187].

Remedies

- 12.** The Court directs a rectification of Orbis' records, and awards compensation of £18,000 to each of the first and second claimants for the loss of autonomy, distress and reputational damage caused by the breaches of duty. The Court does not consider any further remedy is required [188- 203].

NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.bailii.org/> and/or www.judiciary.uk

Paragraph numbers in bold are those assigned in the judgment.