

2.13 Deputy M. Tadier of H.M. Attorney General regarding the use of the Data Protection (Jersey) Law 2005, rather than a civil suit, to request the removal of references to an individual on a website or blog:

Will the Attorney General or the Solicitor General in this case, explain whether the Data Protection (Jersey) Law 2005 can be used, rather than a civil suit, to request the removal of references to an individual on a website or blog? If so, how this is done?

Mr. H. Sharp Q.C., H.M. Solicitor General:

Article 10 of the Data Protection Law provides an individual with a right to issue the Controller of Personal Data that features on a website with a written notice. That notice can require the removal of personal data that is said to cause or is likely to cause substantial damage or stress to that individual or another. The controller of the data, on receipt of notice, has 21 days to decide whether or not to comply with the request. If there is compliance that of course is the end of the matter. Otherwise, the individual can then commence civil action to seek in terms enforcement of the notice. The Royal Court will then decide the issue between the parties.

2.13.1 Deputy M. Tadier:

Will the Solicitor General confirm whether or not personal data necessarily needs to be defamatory when displayed on a blog, or even in any other type of media, for it to be requested to be taken down or can it simply consist of personal information? For example, somebody being named purely factually such as saying that Deputy Tadier is a Deputy in St. Brelade. Could I request for that information to be taken down or would that be ridiculous?

The Solicitor General:

There is a threshold test which I did refer to in my first answer but I repeat now. The test is whether the data is causing or is likely to cause substantial damage or substantial stress to that individual. That is the test.

2.13.2 Deputy T.M. Pitman:

The Solicitor General referred to an order, I think it was 21 days, when people would have to remove it from a website. Is there anything that limits that in regard to someone waiting 21 days, taking something offensive down and then putting it back up? That certainly used to happen on a website attacking people, certainly States Members. The website is now defunct, I believe. Is there any way to combat that?

The Solicitor General:

It seems to me that if a controller of data is served with a notice requiring that controller to take down certain data and after the 21-day period at any point they continue to publish that data, the person who issues the notice is then entitled to go to court to seek enforcement.

2.13.3 Deputy M.R. Higgins:

Yes, the Solicitor General has been talking about the right of individuals to take someone to court for ignoring the notice. Could he explain the powers of the Data Protection Commissioner and explain when she would step into the place of individuals in taking someone to court?

The Solicitor General:

I would not ordinarily expect the Data Commissioner to step into the shoes of a particular individual. The individual would sue in their own name, so to speak. It is right to say that the Commissioner can in certain cases provide assistance to the person who is suing.

2.13.4 Deputy M.R. Higgins:

Can the Solicitor General tell us in what way can he or she give assistance? Is it financial assistance in paying for the court or is it just advice?

The Solicitor General:

The Data Commissioner can provide financial assistance to an individual in a case where (a) there is an issue of general public importance that arises and (b) that a matter has a reasonable prospect of success. As I say, in those particular circumstances, the Commissioner can provide financial assistance to an individual.

2.13.5 Deputy M. Tadier:

Would the Solicitor General care to comment on the comparison with the U.K. where I understand that certainly historically and up until recently, the Information Officer - the equivalent of our Data Protection Officer in Jersey - has been very reluctant to get involved with cases to do with defamation, where people have been perhaps defamed and it has been for the courts to step in. Also, will the Solicitor General comment on when this practice, if it has become common or used in Jersey, came into place, and what is the line between an ordinary civil libel case?

The Solicitor General:

I think it is helpful to look at what was the purpose of the Data Protection Law introduced by States Members. The purpose of the law, as I see it, is that it was designed to protect individuals from the misuse of their private information. In particular, where that misuse results in substantial stress or harm, the law sees fit to give that individual a remedy. So I do not see it necessarily at all being whether or not something could also fall into a defamation case. In my view, the better view is the issue whether or not the Data Commissioner is discharging his or her duties properly and promoting the function of the law, which is to require data controllers to manage data in a responsible manner.