

Hacked off employees - what potential rights does an employee in the UK have against their employer in the event of their personal data being hacked?

As in Germany and France, **UK** employers have a duty to implement appropriate technical and organisational security measures to prevent unauthorised or unlawful access to, or the accidental loss, destruction or damage of, personal data.

Where an employee believes the employer has not complied with this duty, they could lodge a complaint with the Information Commissioner's Office ("ICO") which has the power to investigate and impose a financial penalty on the employer where appropriate. The ICO is unable to award the employee any compensation in respect of the employer's breach.

If financial compensation is the desired outcome, an employee may be able to sue their employer for the damage they have suffered by reason of a contravention of UK data protection legislation. Although damage is not defined by the legislation, it is likely that the employee would need to prove they had suffered loss directly flowing from the employer's breach and this would mean demonstrating loss of earnings. Compensation for distress caused by the breach is also potentially available.

Ultimately an employee could resign and claim constructive dismissal. The employee would need to show, however, that the employer took insufficient steps to protect their personal data to the extent that this amounted to a repudiatory breach of contract which essentially entitled them to treat themselves as dismissed. This would be quite a bold move for an employee, but depending on the particular circumstances, if successful could result in damages for breach of contract and compensation for unfair dismissal.

The information contained in this update is intended as a general review of the subjects featured and detailed specialist advice should always be taken before taking or refraining from taking any action. If you would like to discuss any of the issues raised in this article, please get in touch with your usual Olswang contact. This article is taken from the Digital Employment blog article 'Hacked off employees...' [here](#).