

Director held personally liable for data protection breach

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The recent Irish case of *Nolan & others v Dildar & others* [2024] IEHC 4, addressed the potential personal liability of a director of an Irish company for breaching data protection laws.

Background to the case

The case, which was decided under the Data Protection Acts of 1988 to 2003 - predating the General Data Protection Regulation (GDPR) - demonstrates the established principle that company directors may be held personally liable if they are the direct authors of a tort, even when acting under the guise of a company on whose board they sit. The court held that the contractual relationship in question was between the two companies involved, not the director personally, which indicates that establishing personal liability requires clear evidence of personal action beyond mere directorship.

Findings of the case

In this instance, one Mr Millett, a director, was found personally liable for the unauthorized disclosure of personal data, which constituted a tort under the then-applicable data protection law. The court established that Mr. Millett could not escape liability simply because his actions were conducted on company letterhead, as he was the human author of the correspondence that led to the breach.

Pre-GDPR, for compensation to be awarded under the applicable legislation, a data subject had to show that the breach caused actual damage. Under the GDPR, for a claim for damages to lie, three conditions must be satisfied, namely that GDPR was breached, material or non material damage had been suffered and there was a causal link between the breach and the damage.

Outcome of the verdict

This case demonstrates the importance of compliance with data protection laws, and ensuring that directors are well versed in them. The protective corporate veil may not extend to personal acts of wrongdoing, including breaches of data protection requirements. Directors of Irish companies need to be mindful of their personal actions and the potential for liability, particularly in the realm of data protection.

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