JUDICIARY OF
ENGLAND AND WALES

8 October 2018

SUMMARY

Lloyd v Google LLC
[2018] EWHC 2599 (QB)
Mr Justice Warby

1. The Court gives judgment on an application by the claimant, for permission to serve the proceedings on Google. Permission is needed because Google is a foreign corporation, and it has not agreed to accept service of the proceedings **[1]**.

2. The claim alleges breach of duty under the Data Protection Act 1998 (DPA). The allegation is that over some months in 2011-2012 Google acted in breach of that duty by secretly tracking the internet activity of Apple iPhone users, collating and using the information it obtained by doing so, and then selling the accumulated data. The method by which Google was able to do this is generally referred to as "the Safari Workaround" **[2]**.

3. Mr Lloyd is the only named claimant. However, he sues not only on his own behalf, but also in a representative capacity on behalf of a class of other residents of England and Wales who are also said to have been affected by the Safari Workaround in this jurisdiction ("the Class"). The claim is for "compensation" for "damage" under section 13 of the DPA. No other remedy is sought. No financial loss or distress is alleged. The claim is for an equal, standard, "tariff" award for each member of the Class, to reflect the infringement of the right, the commission of the wrong, and loss of control over personal data. Alternatively, each Class member is said to be entitled to damages reflecting the value of the use to which the data were wrongfully put by Google. It is said that on either basis of recovery more than nominal damages are recoverable by each claimant. No specific figure is put on the tariff, though ranges are mooted, and a figure of £750 was advanced in the letter of claim **[3]**.

4. On either basis of recovery, the total damages payable by the Defendant would be calculated by multiplying the fixed sum awarded in respect of each Class member by the number of individuals within the class. The Class is a large one. Estimates of its scale have varied. The claimant's best estimate at one stage was that it comprised as many as 5.4 million people. The estimate has reduced as the Class has been re-defined and refined. But it is still a substantial seven figure number, 4.4 million in the reply evidence. Google's estimate of the potential liability, if some of the claimant's per capita figures for damages were accepted, is between £1 and £3 billion **[4]**.

5. There is no dispute that it is arguable that Google's alleged role in the collection, collation, and use of data obtained via the Safari Workaround was wrongful, and a breach of duty. The main issues raised by the application are:

(1) whether the pleaded facts disclose any basis for claiming compensation under the DPA;

(2) if so, whether the Court should or would permit the claim to continue as a representative action **[5]**.

6. The Court dismisses the application, concluding that the answer to each of these questions is "no", because:-

(1) the facts alleged in the Particulars of Claim do not support the contention that Mr Lloyd or any of those whom he represents have suffered "damage" within the meaning of DPA, s 13: see **[38-41]**, **[54-81]**; and/or

(2) the Court would inevitably refuse to allow the claim to continue as a representative action because members of the Class do not have the "same interest" within the meaning of CPR 19.6(1) (see **[42-43]**, **[82(1), 83-93]**) and/or it is impossible reliably to ascertain the members of the represented Class (see **[83(2), 94-98]**); and/or permission to continue the action in this form would be and is refused as a matter of discretion (see **[44]**, **[83(3), 99-105]**).