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**Against a backdrop of recent and live cases,
how do you quantify - with accuracy - damages
in (1) privacy cases and (2) data post GDPR**

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Personal Injury Damages

- Loss or damage to two front teeth: £3000 to £6,000
- Loss or damage to several front teeth: £7,000 to £9,000
- Serious multiple jaw fractures: £25,000 to £36,000
- Loss of hearing and speech: £72,000 to £92,000
- Trivial facial scarring: £1,250 to £2,300
- Significant facial scarring: £13,000 to £23,000 for females, £7,000 to £17,000 for males
- Severe post-traumatic stress disorder: £48,000 to £80,000

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***Vento* bands**

- Employment cases involving discrimination and harassment: *Vento v Chief Constable of West Yorkshire* [2003] IRLR 102.
- Lower band of £900 to £8,800 (less serious cases: act of discrimination is an isolated or one-off occurrence).
- Middle band of £8,800 to £26,300: cases that do not merit an award in the upper band.
- Upper band of £26,300 to £44,000: The most serious cases: such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race.

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Private Information

What are damages for?

- Distress
- Damages to mark infringement of the right
- Loss of right to control private information
- Reputational harm
- Aggravated damages

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Distress

- *Lady Archer v Williams* [2003] EMLR 38 – breach of confidence: allegation made to newspaper by ex-PA that she had had a facelift - £2500. Per Jackson J:

“General damages for injury to feelings should be kept to a modest level and should be proportionate to the injury suffered. Such awards should be well below the level of general damages for serious physical or psychiatric injury.”

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- *Cornelius v de Taranto* [2001] EMLR 12 breach of confidence: disclosure of medical report by expert to GP/consultant without consent - £3,000 for injury to feelings.
- *Campbell v MGN Ltd* [2002] EMLR 30 - front page splash - £2500 + £1000 aggravated damages for distress/hurt feelings for revelation of NA attendance only— reduced because significant part of distress caused by her own conduct as to which she could not complain (drug addiction).

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Damages to mark infringement of the right

- *Mosley v News Group* [2008] EMLR 20. News of the World Mass publication of ‘Nazi orgy’ images – breach of confidence/misuse of private information: £60,000.
- Important development: damages not just for injury to feeling but also “*to mark the infringement of a right*”.
- *AAA v Associated Newspapers Ltd* [2013] EMLR 2 – photo published of young child of famous father – MPI - £15,000 to mark court’s view of seriousness of breach of child privacy: child did not know, so there could not be any damages for distress.

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- *Weller v Associated Newspapers Ltd* [2014] EMLR 24 – publication of photos of children of famous father on shopping trip in public. Disclosure of facial features without consent sufficient - £5000 for teenager; £2500 each for 10 month old babies.
- *Cooper v Turrell* [2011] EWHC 3269 (QB) – disclosure of private medical information on internet (and defamatory publication) – libel award £50,000; Misuse of private Information £30,000 (but would have been £40,000 if no libel claim).
- *WXY v Gewanter* [2013] EWHC 589 – disclosure online of private information including sex matters –£24,950 (incl. £5k aggravated) – reference to CA guidance on harassment damages in *Vento* as being relevant because of element of harassment.

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Damages for loss of right to control private information

- *Gulati v MGN Ltd* [2016] FSR 12. Mann J.
- Phone hacking cases – misuse of private Information trial of 8 representative claimants re quantum only on admitted facts.

“The essential principle is that, by misusing their private information, MGN deprived the respondents of their right to control the use of private information” (at [45]).

- Principle recently approved in data cases in *Lloyd v Google* [2019] EWCA Civ 1599.

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- Largest privacy awards ever – ranged from £72,500 to £260,250 – total £1.2 million.
- Highest single award: Alan Yentob. £85,000. His voicemails had been hacked at least twice a day for a period of about 7 years. No articles published. *'Deep hurt and anger'*.
- Shane Roche: £40,000 for 'general hacking' over six years. *'Paranoia'* about leaking of information by friends. Home swept for bugs.

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The Robert Ashworth articles

- *“Rovers and Out; husband prangs Corrie Tracy’s MG.”*
Describes how Mr Ashworth (“Prang Man”) “trashed” a new sports car that the makers had lent to Ms Shaw: £1000
- Wedding article: *“Tracy doesn’t want to be wading in wellies through disinfectant on the big day”*: £1000
- Two articles describing how Tracie Shaw was ‘*devastated*’ when she learned that Ashworth had approached a solicitor about getting a divorce: £20,000
- Two articles about how the couple had been on a ‘*3 day bender*’ in an attempt to rebuild their relationship, emptying the minibar in a hotel, describing problems between them, then checking into a health farm to clean up, with Ms Shaw making plans to see a therapist: £40,000
- Two and a half years of regular hacking: £30,000

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- Distinguishing features of *Gulati* cases:
 - Articles were the product of hacking
 - Lack of good faith on the part of D
 - Sustained nature of the hacking
 - Impact on Cs of publications
 - Vulnerability of Cs

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- *Lloyd v Google LLC* [2018] EMLR 4. Warby J described the facts of Gulati as ‘*exceptional*’.
- *CG v Facebook Ireland Limited and Joseph McCloskey* [2017] EMLR 12 (CA). Publication on Facebook page of details of CG's past conviction as sex offender and related comments responding to the original post. Created a risk of re-offending, incited violence and hatred, led to the potential for public order situations to develop.

“It was an attempt to hunt a sex offender, to drive him from his home and to expose him to vilification”: £3000.

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- *Ali and Aslam v Channel 5* [2019] EWCA Civ 677. ‘*Can’t Pay Won’t Pay*’. Filming of eviction. Mr Ali filmed answering door in bedclothes – t-shirt or vest. Programme filmed in home.
- Finding that the programme maker had encouraged the landlord to taunt Mr Ahmed because it would make good television.
- 9.65 million viewings of the programme over 20 months. Caused ‘*real distress*’.
- The landlord Mr Ahmed had placed his own clips of parts of the scenes online. Viewed by a few hundred. Some distress attributable to those postings. But clips did not feature Mrs Aslam.

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- £10,000 for each claimant.
- No finding of unfairness or inaccuracy. No aggravated damages.
- Focus was on compensation for distress. No separate and distinct sum awarded for 'to mark infringement of the right'.
- Appeal rejected. Distinguished from *Gulati* on the basis that the programmes were made in good faith.
- *ZYC v Bloomberg* [2019] EMLR 20. Article in Bloomberg reporting C investigated for criminal offences. £25,000. No reputational damages. Serious criticisms of conduct of D.

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Reputational damages

- In *Mosley Eady J* distinguished privacy damages from libel damages: former were vindicatory.
- *Cliff Richard v BBC* [2018] EMLR 26. Very high profile broadcast of police raid on singer's home in connection with allegations of child sex abuse. Mann J.
- Extremely distressing. Finding C would never fully recover from the impact of broadcasts.

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- £190,000 plus £20,000 aggravated damages.
- *“Protection of reputation was part of the function of the law of privacy, and it was therefore right to reflect in an award of general damages for misuse of private information the damage caused to the claimant’s reputation by the BBC’s broadcasts.”* [16].
- Makes comparison with damages awarded in libel cases concerning allegations published worldwide of serious criminal conduct about someone with a reputation like that of C. Referred to personal injury damages.

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Aggravated Damages

- Conduct aggravating injury to C. Compensatory not punitive.
- *Gulati*:
 - Cross examination of Cs
 - False denials of hacking by D
 - Very little awarded by way of aggravated damages
 - In the case of Ashworth: £3,500
- *Richard* - submission of BBC reporting for an award: £20,000.

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Data Claims

- Few awards of separate data privacy/ DPA claims. Mostly an adjunct to claims for misuse of private information.
- CA in *Vidal-Hall v Google Inc.* [2016] QB 1003 made clear that damages under s.13(2) DPA 1998 could be claimed for distress only (as well as in journalism cases).

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- *Halliday v Creation Finance* [2013] EWCA Civ 333.
Continued failure by D to process data in compliance with DPA: £750 for distress and £1 nominal damages to get over the pre-Vidal-Hall s.13(2) DPA problem).
- *AB v Ministry of Justice* [2014] EWHC 1847 (QB) – C awarded nominal damages of £1 re D's delay in dealing with his DPA subject access requests and £2250 for distress.
- *CR19 v CC of Police Service Northern Ireland* [2014] NICA 54 - £1 nominal damages re burglary where C's data obtained by terrorists; £20,000 having already been awarded in negligence.

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- *TLT v Home Department* [2016] EWHC 2217. Accidental disclosure by the Home Office of personal data of applicants for asylum/leave to remain. Misuse of private information and a breach of the DPA. Mitting J.
- Applying *Gulati*, the court stated that in principle, damages could be awarded in respect of the loss of control of personal and confidential information.
- Damages awarded of between £2500 and £12,500. Psychiatric and psychological damage cases used as guideline comparators and after assessing the Cs' evidence as to the distress caused by the data breaches.

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- *Grinyer v Plymouth Hospitals NHS Trust* (Plymouth County Court, 14/9/2011, HHJ Cotter QC) – award of £12,500 due to a “significant exacerbation” of existing medical condition by unauthorised disclosure of medical information.
- *Lloyd v Google* [2019] EWCA Civ 1599. Representative action. Google set up a cookie which enabled it to collect ‘business generated information’ about visitors to certain sites without their knowledge. The information could be sold to advertisers. It therefore had an economic value. No actual financial loss. C has suggested £750 per claim. 4 million potential victims.

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How to make sense of these awards?

- Identity of claimant
- Ranges between 'pure' data breach claims (damages very low) and claims where the impact was life changing.
- Single article in mass media: *Mosley* cap of £60,000 (in 2007)?
- Significance of reputational damages – can elevate to awards in libel cases.
- Underlying conduct of D.

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Thank you

Adam Wolanski QC