

Corporate Social Responsibility, Data Protection and the Right to Privacy

Vasso Steele, Liverpool John Moores University, School of Law

Abstract

Technology and the internet have added a new stakeholder concern to the Corporate Social Responsibility (CSR) agenda: online privacy and data protection. This article traces the emergence of CSR on the agenda of businesses, considering developments in the United Kingdom, the United States and European Union and the business case that supports a move towards taking CSR seriously. Additionally, the article draws on views of leading theorists such as Friedman and highlights the power of consumer boycotts to pressure corporations to adopt ethical and socially responsible practices. Building on existing literature that establishes data protection as a CSR, the research outlines the legislative efforts to protect personal data and online privacy in the UK, focusing on the General Data Protection Regulation. It also considers the challenges created by Brexit and ongoing legislative efforts that attempt to limit data protection in the UK. Linking CSR and data protection to human rights, the article establishes breaches of data protections as violations of the right to privacy for which businesses should be held accountable. The paper argues that businesses are starting to pay more attention to their CSR in general and data protection as a CSR in particular. However, online privacy is still a rather new concept on the CSR agenda and businesses have to improve their efforts to ensure they have the correct framework in place to use and store data securely.

Keywords: Data Protection; CSR; Law; Human Rights; Privacy; GDPR

1. Introduction

Living in the 21st century means that everything is very technology-based. Computers, laptops, mobile phones, TVs and smart watches are things that are used every day. What goes hand in hand with technology nowadays is social media. Every device is likely to have the Facebook, Instagram or LinkedIn applications downloaded for personal and professional use, including by businesses around the world. Technology

users are asked to give their personal information in order to sign up to social media platforms and to be able to access them freely. Therefore, large corporations are responsible for storing this information securely and not to use it without the data subject's permission.

The General Data Protection Regulation¹ (GDPR) aims to put customers' personal data protection at the centre of company strategy. Controversially, organisations do not always need consent to use personal data if they have a valid reason.² However, sharing a person's personal data without their consent is a clear breach of the right to privacy and multinational corporations such as Google and Facebook have received considerable fines because they gathered and used personal data irresponsibly and without obtaining sufficient consent.³ Article 83 GDPR provides the legal basis for the imposition of fines for breaches of the GDPR. Companies may be fined up to €10 or €20 million or, in the case of an 'undertaking', up to 2 % or 4 % of the 'total worldwide annual turnover of the preceding financial year' in respect of certain breaches of obligations under the GDPR.⁴

This article analyses whether data protection legislation is being enforced correctly so that business entities are aware that it is part of their corporate social responsibility (CSR) that protects their clients and promotes their business objectives. It will introduce the idea of corporate social responsibility, data protection and relevant legislation, and highlight the issues that can arise if data security measures are inadequate. This area of law is becoming increasingly important as technology has become a part of our everyday lives. Therefore, more issues have been raised recently in relation to online data privacy as this is a basic human right and corporations should strongly consider improving their data protection guidelines. The aim of this research is to demonstrate how data protection needs to be considered as a primary CSR objective, the positive impact it can have on the business as a whole, and how recently

¹ The General Data Protection Regulation 2016/679 (GDPR).

² Bird & Bird, 'Guide to the General Data Protection Regulation' (May 2020) <<https://www.twobirds.com/-/media/pdfs/gdpr-pdfs/bird--bird--guide-to-the-general-data-protection-regulation.pdf>> accessed 10 June 2022.

³ David Cowan, 'Total GDPR Fines Climb to 114m Euros as Companies Struggle to Comply with Regime' (2020) *The Global Legal Post* <<https://www.globallegalpost.com/>> accessed 16 June 2022.

⁴ Article 83(4) - (5) GDPR (n 1).

updated legislation such as the General Data Protection Regulation,⁵ and the Data Protection Act 2018 can promote these business objectives.

2. The Emergence of CSR and Its Importance

Corporate Social Responsibility refers to a company's ethics. It is a self-regulating business model that helps a company to be socially responsible to itself, its stakeholders and the public.⁶ CSR has emerged as a global phenomenon in both the private and public sectors. In modern form, it originated in the UK in the 1970s.⁷ This development can be linked to three major factors.⁸ The first one is the advancement of the concept in the United States. The second was the membership of the United Kingdom in the European Union, which it joined in 1973 and left in 2020.⁹ Thirdly, several government studies and private publications have supported the concept of corporate social responsibility.¹⁰ All three factors had a significant impact on CSR becoming a more popular concept in the UK.

It is likely that studies and publications highlighting the positive relationship of increased social awareness and an increase in profits have caused businesses to pay more attention to their daily activities and many participate in CSR even though involvement is voluntary.¹¹ Given that the primary goal for any company is to maximise profits, the high participation rate in CSR implies that companies have come to the conclusion that, by adopting a sustainable business model, they are more likely to maximise investment and profits.¹² However, it has to be noted that the relationship between the CSR activities and business performance is heterogeneous across

⁵ GDPR (n 1).

⁶ Yuan Yuan et al 'Business Strategy and Corporate Social Responsibility' (2020) 162 (2) Journal of Business Ethics 359.

⁷ Ronald H Coase, 'The Problem of Social Cost' (1960) 3 Journal of Law and Economics 15; Frank H Easterbrook and Daniel R Fischel, *The Economic Structure of Corporate Law* (Harvard University Press 1991).

⁸ Sheikh Saleem, *Corporate Social Responsibility Law and Practice* (Cavendish Publishing Limited 1996).

⁹ Olufemi Amao, *Corporate Social Responsibility, Human Rights and the Law: Multinational Corporations in Developing Countries* (Routledge 2011).

¹⁰ Saleem (n 8) 13.

¹¹ Joshua D Margolis and James P Walsh, *People and Profits* (Lawrence Erlbaum 2001).

¹² N Craig Smith, 'Corporate Social Responsibility: Not Whether, But How?' (2003) 45 (4) California Management Review 52.

industries.¹³ CSR usually has a positive impact for businesses but that is not always the case.¹⁴ It has been shown that different forms of CSR have different effects on the financial performance of companies from various business sectors.¹⁵ Nevertheless, since the 1990s, corporations aiming to be good corporate citizens have formulated strategies to address issues such as pollution, energy use, waste production, ethical practices, animal testing, child labour, sweatshops, workforce diversity, and data protection.¹⁶

Despite its increasing prominence in recent years, CSR remains a multifaceted and contentious term.¹⁷ Many theorists have tried to give their opinion on whether businesses have a responsibility to be socially and environmentally aware. Henderson and Epstein have reinforced the theories of the neo-classical economist Milton Friedman. Many years ago, Friedman concluded that 'there is only one social duty a business has, and that is to use its resources and participate in profit-enhancing activities as long as it remains within the guidelines of competition, without deception or fraud.'¹⁸ Friedman's controversial dictum on corporate social responsibility was part of an attack on much broader ideas of the social role of business which Friedman perceived as disruptive.¹⁹ Friedman's points are more to be commended than his critics usually allow.²⁰ Firstly, he was not opposed to the concept that businesses have social responsibilities that they must meet. He was opposed to practises that went beyond the strictly specified position of the company.²¹ Friedman argued that businesses fulfilled their social obligations through traditional business practises, mainly providing the products and services required at prices that people could afford.²² Secondly, Friedman argued that a more expansive position for the company was a troubling deviation from the competitive structure of capitalism.²³ He also

¹³ Tim Stobierski, '15 Eye Opening Corporate Social Responsibility Statistics' (2021) <<https://online.hbs.edu/blog/post/corporate-social-responsibility-statistics>> accessed 10 June 2022.

¹⁴ Ibid.

¹⁵ Mary Jo Goedeke, 'Is CSR Becoming a Corporate Requirement?' (2020) 32 (2) *Journal of Managerial Issues* 162.

¹⁶ Irene Pollach, 'Online Privacy as a Corporate Social Responsibility: An Empirical Study' (2011) 20 (1) *Business Ethics, the Environment & Responsibility* 88.

¹⁷ Kenneth Amaeshi, Paul Nnodim and Osuji Onyeka, *Corporate Social Responsibility, Entrepreneurship, and Innovation* (Routledge 2013).

¹⁸ Milton Friedman, *Capitalism and Freedom* (University of Chicago Press 1962) 60-61.

¹⁹ Smith, 'Corporate Social Responsibility' (n 12).

²⁰ Smith, 'Corporate Social Responsibility' (n 12) 69-75.

²¹ Ibid.

²² Adam Smith, *The Wealth of Nations* (Everyman 1971) 400.

²³ Smith, 'Corporate Social Responsibility' (n 12).

challenged whether managers were qualified to participate in social issues, whether the imposition of their ideals on the social arena was beneficial, and whether they were actually subverting the role of government.²⁴ While she does not directly talk about CSR, Klein presents a similar argument, expressing concern about the growing power of companies and what she labels privatisation and the decline of democracy.²⁵

Friedman and Klein are right in raising concerns about some CSR initiatives. On the one hand, too often there is no real value of companies' supposedly social engagement.²⁶ Unfortunately, the amount spent on promoting a company's CSR activities can be greater than the amount spent on the CSR practice itself.²⁷ On the other hand, there is the question of the validity of corporate participation in social issues, perhaps the most theoretically relevant of Friedman's original critique of CSR today.

However, even though some companies might engage in CSR with questionable intentions, CSR increases consumer expectations when paying for a product or service²⁸ and consumers are willing to put pressure on companies if their expectations are not met. In the 1990s, the business media appeared to agree both that consumer boycotts work and that they are happening more frequently than before.²⁹ The most famous global market boycotts include the European boycott of Royal Dutch/Shell in 1995 on its attempt to dump the Brent Spar oil platform at sea. As a result of this decision, Shell's reputation suffered from public scrutiny as well as a 50% fall in sales in some markets.³⁰ Shell agreed to the demands of Greenpeace and abandoned their initial plan.³¹ The criticism of environmentalists and human rights activists and the ongoing boycotts were crucial components in a radical shift in the way the company

²⁴ Ibid.

²⁵ Irma Adelman and Frank Adelman, 'The Dynamic Properties of the Klein-Goldberger Model' (1959) 27 (4) *Econometrica* 596.

²⁶ Dominic McGoldrick, 'Sustainable Development and Human Rights: An Integrated Conception' (1996) 45 (4) *The International and Comparative Law Quarterly* 796.

²⁷ Ronald Alsop, 'Perils of Corporate Philanthropy: Touting Good Works Offends the Public, but Reticence is Misperceived as Inaction' *Wall Street Journal* (16 January 2002)

<https://sites.pitt.edu/~mitnick/EBEweb/AlsopCorpPhilWSJ1_16_02.html> accessed 12 June 2022. .

²⁸ Smith, 'Corporate Social Responsibility' (n12).

²⁹ 'Boycotting Corporate America' *The Economist* (26 May 1990) 69.

³⁰ Wallace N Davidson, Dan L Worrell and Abuzar El-Jelly, 'Influencing Managers to Change Unpopular Corporate Behaviour Through Boycotts and Divestitures: A Stock Market Test' (1995) 34 (2) *Business and Society* 171.

³¹ Lynn Sharp Paine and Mihnea Moldoveanu, *Royal Dutch/Shell in Nigeria* (Harvard Business School 1999).

seeks to live up to its social and ethical obligations.³² Another more recent example of a boycott is when millions of Facebook users deleted their accounts after a data breach scandal.³³ The Facebook – Cambridge Analytica data scandal concerned the gathering of personal data of millions of Facebook users without their consent to be used for political advertising. Facebook had to pay £500,000 to the UK's Information Commissioner's Office. The Federal Trade Commission voted to fine the company around \$5 billion and the US Securities Exchange Commission asked for a \$100 million settlement. In addition, soon after the story was published, Facebook stock fell by about 24%, equivalent to \$134 billion.³⁴ A further example involved Nike, which suffered from a multi-country boycott due to the allegations that their Asian sweatshop conditions are not appropriate. Ten years ago, Nike said that they were not responsible for the working conditions in their overseas contractors' factories because they did not own them.³⁵ However, an NGO campaign led to the admission by Phil Knight, Nike's CEO, that 'Nike has become synonymous with slave wages, forced overtime and arbitrary abuse.'³⁶ As a result, Nike now employs more than 90 people in CSR positions and invests significant amounts of capital in independent third party audits of its suppliers.³⁷ All the above examples demonstrate the negative implications that businesses suffer when they fail to take CSR seriously. Damage to the environment, data protection breaches and child slavery are evidently unacceptable to consumers in 2021 and businesses will seriously suffer if they fail to adapt to this new way of doing business ethically.

Microsoft is one of the companies with the best CSR reputation, 5th in the global ranking.³⁸ By being honest about product changes and errors, the American company

³² Mingming Feng, Xiaodan Wang and Jerry Glenn Kreuze, 'Corporate Social Responsibility and Firm Financial Performance: Comparison Analyses Across Industries and CSR Categories' (2017) 32 (3-4) American Journal of Business 106.

³³ Smith, 'Corporate Social Responsibility' (n 12).

³⁴ Joanne Hinds, Emma Williams and Adam Joinson, "'It Wouldn't Happen to Me": Privacy Concerns and Perspectives Following the Cambridge Analytica Scandal' (2020) 143 International Journal of Human-computer Studies <<https://www.sciencedirect.com/science/article/abs/pii/S1071581920301002>> accessed 12 June 2022.

³⁵ Feng, Wang and Kreuze (n 32).

³⁶ Tom McCawley, 'Racing to Improve its Reputation: Nike has Fought to Shed its Image as an Exploiter of Third-World Labor Yet it is Still a Target of Activists' *Financial Times* (21 December 2000) 14.

³⁷ Smith, 'Corporate Social Responsibility' (n 12).

³⁸ Microsoft, 'Corporate Social Responsibility Report 2019' <<https://query.prod.cms.rt.microsoft.com/cms/api/am/binary/RE3YnSI>> accessed 12 June 2022.

has strengthened its credibility by inspiring every person and every organization on the planet to do more, following the company's mission.³⁹ Increasing the connection between its products and services with the company's mission and ethics as well as selling products at more affordable prices helped the company to obtain this ranking.⁴⁰ This proves that even a tech-based company like Microsoft can still be competitive when it comes to CSR reputation if the correct steps are taken to protect data.

3. The Importance of Data Protection and Current Issues in the UK

As stated above, data protection is part of the universal right to privacy and involves the fair and responsible use of information about people. Those who control personal data have to handle this information correctly. Data protection legislation governs many aspects of daily life such as how confidential information is handled in schools, hospitals and even social media. In addition, it permits individuals the right to access information about themselves.⁴¹

In the 1970s, as computers were increasingly used to process and transmit personal data, European and North American countries began to implement privacy laws on information.⁴² Today, the Organisation for Economic Co-operation and Development (OECD) Guidelines form the basis of most information privacy legislation around the world. In an attempt to balance the 'fundamental but competing values' of 'privacy and free flow of information', the OECD implemented minimum standards for the protection of personal data. The central requirement is that the collection and use of personal data be both limited and lawful — that is, either expressly permitted by law or consented to by the persons to whom the data relates — as well as limited to the

³⁹ Jacquelyn Smith, 'The Companies With the Best CSR Reputations' *Forbes* (10 December 2012) <<https://www.forbes.com/sites/jacquelynsmith/2012/12/10/the-companies-with-the-best-csr-reputations/>> accessed 12 June 2022.

⁴⁰ Andre Goncalves, 'The Top 100 Companies With the Best CSR Reputation' (11 March 2019) <<https://youmatter.world/en/top-100-companies-best-csr-reputation2019-28108/>> accessed 12 June 2022.

⁴¹ John Kelly, 'Data Protection' (20 January 2021) <<https://www.jisc.ac.uk/guides/data-protection>> accessed 12 June 2022.

⁴² European Data Protection Supervisor, 'The History of the GDPR' <https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en> accessed 12 June 2022.

minimum collection and use necessary to achieve the stated purpose and not used for other unrelated purposes.⁴³

In addition to the OECD Guidelines, the EU's data protection laws have long been regarded as a gold standard all over the world. Together with the Data Protection Act 2018 (DPA),⁴⁴ they form the basis of data protection laws in the UK. In 2016, the EU adopted the General Data Protection Regulation (GDPR).⁴⁵ It replaced the 1995 Data Protection Directive which was adopted at a time when the internet was in its infancy and therefore needed reform.⁴⁶ This reform included broadening its territorial scope, covering data processing activities related to either the offering of goods or services to EU data subjects or the monitoring of their behaviours within the EU.⁴⁷ The GDPR aimed to ensure that data subjects are enabled to give informed consent to the processing of their data, including how it will be used, shared and stored.⁴⁸ Individuals must be provided with the adequate privacy information which states how their personal data will be processed, the time periods it will be stored for and who will have access to it. The information must be easy to understand and use clear and plain language so anyone reading it will be able to comprehend what their personal information is being used for.⁴⁹ Relatedly, the GDPR was designed to improve privacy and confidentiality. If misused, access to personal information, such as location from a GPS signal, telephone calls and texts, medical records, and bank statements, might put people at risk. For this reason, it is essential for companies to recognise their responsibility to protect the personal data they have access to.⁵⁰ Pursuing the same goal, the GDPR is to integrate data security into the design process of goods and services, requiring what is called privacy by design. This means that the safeguards for privacy and data protection must be integrated into goods and services from the earliest stage of production and, in many cases, must be activated and even set to the

⁴³ Article 83(4) - (5) GDPR (n 1).

⁴⁴ Data Protection Act 2018 (DPA 2018).

⁴⁵ GDPR (n 1).

⁴⁶ European Data Protection Supervisor (n 42).

⁴⁷ Jayne Chorpash, 'Do You Accept These Cookies? How the General Data Protection Regulation Keeps Consumer Information Safe' (2020) 40 (2) Northwestern Journal of International Law & Business 227.

⁴⁸ GDPR (n 1).

⁴⁹ European Data Protection Board, 'Guidelines 01/2022 on Data Subject Rights – Right of Access – Version 1.0' (18 January 2022) <https://edpb.europa.eu/system/files/2022-01/edpb_guidelines_012022_right-of-access_0.pdf> accessed 12 June 2022.

⁵⁰ Cecily Joseph and Gerard Chan, 'How the GDPR Impacts Corporate Responsibility' (2 July 2018) <<https://www.nortonlifelock.com/blogs/corporate-responsibility/crandgdpr>> accessed 12 June 2022.

highest degree of protection and confidentiality by default. This will ensure that any errors will be caught earlier and will minimise the chance of a data breach.⁵¹

The GDPR's goals are grounded in a number of core principles that are set out at the beginning of the statute and are foundational for everything that follows. These core principles do not lay down hard rules but instead reflect the essence of the general data protection regime. In brief, the core principles of the GDPR are that personal data must be processed lawfully, fairly and transparently; collected only for specified purposes; limited to what is necessary for those purposes; kept accurate; held for no longer than is necessary; and retained securely.⁵²

Following these core principles is a key building block for good data protection practise and companies must have appropriate measures and records in place to ensure adherence.⁵³ The GDPR requires accountability and transparency from all those who collect and handle any information relating to personal data.⁵⁴ Failure to follow these basic principles can leave an organisation vulnerable to significant fines of up to €20 million or 4% of the business' total worldwide annual turnover, whichever is higher.⁵⁵

A GDPR data breach survey revealed that there were 160,921 breaches of personal data within the EEA from 25 May 2018 to January 2020. Since then, the numbers have increased. The rough total of all GDPR fines given so far amounts to €220 million. Oddly, the lowest and highest fines to date have been issued to Google. On 21 January 2019, the French National Commission on Informatics and Liberty (CNIL) fined Google with a €50 million fine. This is the biggest GDPR⁵⁶ fine to this date, issued for violation of the requirement to provide information about where personal data is collected from the data subject, about where personal data has not been obtained from the data subject, of requirements regarding the lawfulness of processing, and principles relating to the processing of personal data.⁵⁷ The fine was therefore imposed for lack of transparency as to how the data was collected from data subjects

⁵¹ Ibid.

⁵² Article 5 GDPR (n 1)

⁵³ Kelly (n 41).

⁵⁴ Ibid.

⁵⁵ Oliver Yaros, 'GDPR Fines – Lessons From Competition Law' (December 2018)

<<https://www.mayerbrown.com/en/perspectives-events/publications/2018/12/gdpr-fines---lessons-from-competition-law>> accessed 12 June 2022.

⁵⁶ GDPR (n 1).

⁵⁷ Anonos, 'What the Google 50 Million Euro GDPR Fine Means for Big Data Analytics' (22 January 2019) <<https://www.prnewswire.com/news-releases/what-the-google-50-million-euro-gdpr-fine-means-for-big-data-analytics-300781794.html>> accessed 12 June 2022.

and used for advertisement targeting. Google failed to provide users with sufficient information about consent policies and did not give them enough control over how their personal data is processed.⁵⁸

The UK Court of Appeal came to similar conclusions in *Lloyd v Google LLC*.⁵⁹ The case sets a precedent for representative opt-out style class actions for data protection breaches under UK law. An application for permission to appeal to the Supreme Court is still pending, this is because the Court of Justice found that the territorial scope of the right to be forgotten was jurisdictionally limited and therefore could not be applied to worldwide domain names.⁶⁰

The largest GDPR fine ever imposed in the UK was announced in July 2019 when the UK Information Commissioner's Office (ICO) communicated its intention to fine British Airways €204,6 million (£183.39 million) for violating Article 31 of the GDPR.⁶¹ Owing to the COVID-19 pandemic and its effect on the airline industry, the fine was reduced to £20 million.⁶² The breach happened in July 2018, but it was not discovered until September. During those few months, the British Airways website redirected users to a hacker website, resulting in hackers stealing the personal information of over 400.000 customers.⁶³ According to an official statement issued by the ICO, the investigation discovered that the airline was handling a considerable amount of personal data without proper security measures in place. This failure violated data protection law and as a result, BA was the victim of a cyber-attack that went undetected for two months. As per the ICO, a variety of information including passwords, payment card, and travel booking data as well as name and address information was compromised by poor security arrangements of the company.⁶⁴ These

⁵⁸ '5 Biggest GDPR Fines So Far' (28 January 2021) <<https://dataprivacymanager.net/5-biggest-gdpr-fines-so-far-2020/>> accessed 12 June 2022.

⁵⁹ *Lloyd v Google LLC* [2019] EWCA Civ 1599.

⁶⁰ '5 Biggest GDPR Fines So Far' (n 58).

⁶¹ GDPR (n 1).

⁶² Chris Nuttall, 'BA Hit by Biggest GDPR Fine to Date' *Financial Times* (8 July 2019) <<https://www.ft.com/content/36f3272e-a19e-11e9-974c-ad1c6ab5efd1>> accessed 12 June 2022.

⁶³ Alex Scroxton, 'BA Breach Penalty Sets Precedent for Future Effectiveness of GDPR: The 90% Reduction in the Fine Levied on BA Over a 2018 Data Breach has set Legal Experts Talking About the Ramifications for the Future of Data Protection' (20 October 2020) <<https://www.computerweekly.com/news/252490725/BA-breach-penalty-sets-new-GDPR-precedents>> accessed 12 June 2022.

⁶⁴ Elizabeth West, 'ICO's One-Two Punch Hits British Airways & Marriott with GDPR Fines' (10 July 2019) <<https://www.businesstravelnews.com/Global/ICOs-One-Two-Punch-Hits-Marriott-with-GDPR-Fine>> accessed 12 June 2022.

security failures and the use of personal data without sufficient consent led to the issue of these fines.

The fines demonstrate that the updated GDPR⁶⁵ has increased accountability and has resulted in greater awareness of data protection issues at all levels. Businesses had to adapt the way they operated in order to ensure data was stored correctly and that personal information was kept strictly confidential. There has been an increased uptake of comprehensive data protection management programmes, with organisations revisiting existing programmes to ensure they are up to date.⁶⁶ For example, corporations started to hire employees to act as Chief Privacy Officers. Their responsibilities include collecting information on the social and legal aspects of privacy, creating the company's privacy policy, organising training on corporate data handling practises to internal and external stakeholders, and representing the company's commitment to privacy.⁶⁷

Despite legal and business reform, concerns have been raised regarding the extent of data protection provided in the United Kingdom. This is because there has been a tendency to pass or attempt to pass legislation enabling extensive data sharing and supervisory powers in the interests of national security and public safety. Some of these attempts have failed due to challenges posed by non-governmental organisations (NGOs) or individuals.⁶⁸ Additionally, the Joint Committee on Human Rights has regularly voiced concern, usually rejected by the Government, about the effectiveness of safeguards for the disclosure of personal data in certain bills. Government-initiated evaluations of the statutory structure are currently ongoing.⁶⁹

In addition to national legislation and legislative attempts, developments at EU level affect data protection in the UK even post-Brexit.⁷⁰ More than 70% of all trade in services is made possible by data flows and, as a consequence, data protection is vital to UK foreign trade. This indicated that, without a strong data protection

⁶⁵ GDPR (n1).

⁶⁶ Digitaleurope, 'Almost Two Years of GDPR: Celebrating and Improving the Application of Europe's Data Protection Framework' (21 January 2020) <<https://www.digitaleurope.org/wp/wp-content/uploads/2020/01/Position-paper-on-GDPR-review.pdf>> accessed 12 June 2022.

⁶⁷ Information Commissioner's Office, 'Guide to the GDPR' (2 August 2018) <<https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr-1-0.pdf>> accessed 12 June 2022.

⁶⁸ Diker Vanberg and Aysem Maunick, 'Data Protection in the UK Post-Brexit: The Only Certainty is Uncertainty' (2018) 32 (1) *International Review of Law, Computers & Technology* 190.

⁶⁹ Joint Committee on Human Rights, *Fourteenth Report* (HL and HC 2007–08) para 1-7.

⁷⁰ Joseph and Chan (n 50).

framework that enables data exchanges with the EU, the United Kingdom is likely to experience considerable financial implications.⁷¹ To prevent this, it has been decided that the GDPR will be integrated into UK law as the UK GDPR and later on, further discussions will be held on how the UK-EU transfer is going to happen.⁷² If a reasonable decision had not been reached, it would have caused confusion and uncertainty for companies and public authorities as they would not have been able to freely move data from the United Kingdom to the EU and vice versa. It will be interesting to see the extent to which the Government will eventually adopt EU measures by encouraging businesses to take steps towards implementing CSR and GDPR objectives, or whether it will take a step back to adjust to a new way of trade.

4. CSR, Data Protection and Human Rights

In additions to economic concerns, human rights is an area which needs to be taken into consideration when talking about data protection and CSR.

As the examples of the boycotts against Shell, Facebook and Nike as well as the fines for Google and British Airways demonstrate, lack of data protection and effectively exercising CSR can lead to human rights violations. In the context of data protection, it can lead to breaches of the right to privacy. The Human Rights Act specifically states in Article 8 that '[e]veryone has the right to respect for his private ... life'. A MNC could breach this article by accessing a private person's personal information without their consent and use it or even sell it for their own benefit.

However, businesses' obligations under human rights law are contested. CSR has become the voluntary way in which firms respond to challenges they would typically not be legally responsible for such as the promotion and protection of human rights.⁷³ The argument is that, as private actors, companies are not intended to take on such commitments.⁷⁴ However, companies are legal entities that arguably are in the same position as the natural person vis-à-vis international human rights law and, as such, should have the same responsibilities under international human rights law.⁷⁵ The

⁷¹ Vanberg and Maunick (n 68).

⁷² Kelly (n 41).

⁷³ Jennifer A Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge University Press 2006) 42.

⁷⁴ *Ibid.*

⁷⁵ Amao (n 9).

move by companies to adopt CSR as a philosophy reflects this debate and is partly driven by the difficulty experienced in enforcing corporations' human rights obligations by hard law.⁷⁶ Noticeably, human rights issues have been gradually integrated into the CSR strategy of businesses. Human rights issues are addressed, for example, through corporate reviews of compliance with human rights, environmental reports in accordance with international human rights principles, and corporate codes of conduct.

In 2003, the United Nations (UN) acknowledged the role that MNCs play in the promotion protection of human rights and prevention of breaches. The Sub-Commission on the Promotion and Protection of Human Rights approved the Norms on Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights (the Norms).⁷⁷ They incorporate a variety of human rights principles directly applicable to multinational corporations and other enterprises.⁷⁸ They include obligations to treat workers equally and to provide equal opportunities; obligations not to engage in or benefit from violations of human rights or humanitarian laws; specific obligations to workers in the areas of compulsory labour, prohibition of child labour, provision of safe and healthy environment, provision of fair and progressive remuneration standards and right to collective bargaining; respect of international and domestic law of host states including human rights obligations, transparent obligations; consumer protection and environmental protection.⁷⁹

5. Conclusion

This article demonstrated that participating in CSR is becoming, and in many cases already is, standard business practice. Consumer demand for responsible corporate activities is increasing and many corporations have found the business case for paying more attention to CSR to be compelling, particularly considering reputational risk and

⁷⁶ Janet Dine, *Companies, International Trade and Human Rights* (Cambridge University Press 2005) 222.

⁷⁷ David Weissbrodt and Muria Kruger, 'Norms on the Responsibilities of Transnational Corporations and other Businesses Enterprises with Regard to Human Rights' (2003) 97 (4) *American Journal of International Law* 901.

⁷⁸ Amapo (n 9).

⁷⁹ United Nations Subcommission on the Promotion and Protection of Human Rights, 'Norms on Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights (Draft)' (26 August 2003) UN Doc CN.4_Sub.2_2003_12_Rev.2-EN.

other pressures in today's business climate. CSR appears to have taken on strategic importance. However, there are also some reservations about the validity of CSR initiatives. Concerns may be raised about the appropriateness of MNCs taking action on social issues and whether they are qualified to do so. This could lead to a backlash against well-intentioned CSR policies and could sabotage an otherwise compelling business case.⁸⁰

Just as CSR, data protection is becoming increasingly important because, if data is not secured adequately, private details about someone's life can be exposed. Legislation such as the Data Protection Act 2018 and the GDPR⁸¹ play an essential role in ensuring that businesses adequately protect private information and integrate digital rights, such as privacy rights, into their CSR frameworks. The regulation still has a long way to go but it enhances privacy and data security safeguards in the European Economic Area and aims to restrict data infringements into people's lives, holding MNCs accountable through fines if breaches occur. It is crucial that future legislative developments in the UK post-Brexit do not water down these protections. To the contrary, the Government could introduce more bodies that will closely monitor compliance with the DPA and GDPR and introduce more severe penalties so that data protection will be taken as seriously as it should be.

Effective data protection is particularly important because obtaining an individual's personal information without their consent is a violation of their human rights. Consequently, businesses need to take data privacy seriously and prioritise it in their CSR policy. Otherwise, their corporate image will suffer, they will lose out on profit and could face paying a fine.

While the article observed that privacy may be maturing from an ethics/compliance focus to a more reactive, strategic focus for businesses, data protection as a CSR is still in its infancy. Currently, businesses prioritise customer concerns and increased employee training. It could be extended to privacy protection for secondary stakeholders as well.⁸²

⁸⁰ Smith, 'Corporate Social Responsibility' (n 12).

⁸¹ GDPR (n 1).

⁸² Pollach (n 16).

Bibliography

Cases

Lloyd v Google LLC [2019] EWCA Civ 1599

Legislation

Data Protection Act 2018

General Data Protection Regulation 2016/679

Parliamentary Reports

Joint Committee on Human Rights, *Fourteenth Report* (HL and HC 2007–08)

United Nations Documents

United Nations Subcommission on the Promotion and Protection of Human Rights, 'Norms on Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights (Draft)' (26 August 2003) UN Doc CN.4_Sub.2_2003_12_Rev.2-EN

Books

Amaeshi N, Osuji P, Nnodim and Osuji O, *Corporate Social Responsibility, Entrepreneurship, and Innovation* (Routledge 2013)

Amao O, *Corporate Social Responsibility, Human Rights and the Law : Multinational Corporations in Developing Countries* (Routledge 2011)

Dine J, *Companies, International Trade and Human Rights* (Cambridge University Press 2005)

Easterbrook FH and Fischel DR, *The Economic Structure of Corporate Law* (Harvard University Press 1991)

Friedman M, *Capitalism and Freedom* (University of Chicago Press 1962)

Margolis D and Walsh JP, *People and Profits* (Lawrence Erlbaum 2001)

Saleem S, *Corporate Social Responsibility Law and Practice* (Cavendish Publishing Limited 1996)

Smith A, *The Wealth of Nations* (Everyman 1971)

Sharp Paine L and Moldoveanu M, *Royal Dutch/Shell in Nigeria* (Harvard Business School 1999)

Zerk JA, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge University Press 2006)

Journal Articles

Adelman I and Adelman F, 'The Dynamic Properties of the Klein-Golberger Model' (1959) 27 (4) *Econometrica* 596

Chorpash J, 'Do You Accept These Cookies? How the General Data Protection Regulation Keeps Consumer Information Safe' (2020) 40 (2) *Northwestern Journal of International Law & Business* 227

Coase RH, 'The Problem of Social Cost' (1960) 3 *Journal of Law and Economics* 15

Davidson WN, El-Jelly A and Worrell DL, 'Influencing Managers to Change Unpopular Corporate Behavior Through Boycotts and Divestitures: A Stock Market Test' (1995) 34 (2) *Business and Society* 171

Diker V and Maunick M, 'Data Protection in the UK Post-Brexit: The Only Certainty is Uncertainty' (2018) 32 (1) *International Review of Law, Computers & Technology* 190

Feng M Wang X and Kreuze JG, 'Corporate Social Responsibility and Firm Financial Performance: Comparison Analyses Across Industries and CSR Categories' (2017) 32 (3-4) *American Journal of Business* 106

Goedeke MJ, 'Is CSR Becoming a Corporate Requirement?' (2020) 32 (2) *Journal of Managerial Issues* 162

Hinds J, Williams E and Johnson A, "'It Wouldn't Happen to Me": Privacy Concerns and Perspectives Following the Cambridge Analytica Scandal' (2020) 143 *International Journal of Human-Computer Studies*

<https://www.sciencedirect.com/science/article/abs/pii/S1071581920301002>>

accessed 12 June 2022

McGoldrick D, 'Sustainable Development and Human Rights: An Integrated Conception' (1996) 45 (4) *The International and Comparative Law Quarterly* 796

Pollach I, 'Online Privacy as a Corporate Social Responsibility: An Empirical Study' (2011) 20 (1) *Business Ethics, the Environment & Responsibility* 88

Smith CN, 'Corporate Social Responsibility: Not Whether, But How?' (2003) 45 (4) *California Management Review* 52

Weissbrodt D and Kruger M, 'Norms on the Responsibilities of Transnational Corporations and other Businesses Enterprises with Regard to Human Rights' (2003) 97 (4) *American Journal of International Law* 901

Yuan Y et al 'Business Strategy and Corporate Social Responsibility' (2020) 162 (2) *Journal of Business Ethics* 359.

Newspaper Articles

'Boycotting Corporate America' *The Economist* (26 May 1990) 69

Alsop R, 'Perils of Corporate Philanthropy: Touting Good Works Offends the Public, but Reticence is Misperceived as Inaction' *Wall Street Journal* (16 January 2002) https://sites.pitt.edu/~mitnick/EBEweb/AlsopCorpPhilWSJ1_16_02.html> accessed 12 June 2022

Cowan D, 'Total GDPR Fines Climb to 114m Euros as Companies Struggle to Comply with Regime' *The Global Legal Post* (2020) <https://www.globallegalpost.com/>> accessed 16 June 2022

McCawley T, 'Racing to Improve its Reputation: Nike has Fought to Shed its Image as an Exploiter of Third-World Labor Yet it is Still a Target of Activists' *Financial Times* (21 December 2000) 14

Smith J, 'The Companies With the Best CSR Reputations' *Forbes* (10 December 2012) <https://www.forbes.com/sites/jacquelynsmith/2012/12/10/the-companies-with-the-best-csr-reputations/>> accessed 12 June 2022

Online Sources

'5 Biggest GDPR Fines So Far' (28 January 2021)

<<https://dataprivacymanager.net/5-biggest-gdpr-fines-so-far-2020/>> accessed 12 June 2022

Anonos, 'What the Google 50 Million Euro GDPR Fine Means for Big Data Analytics'

(22 January 2019) <<https://www.prnewswire.com/news-releases/what-the-google-50-million-euro-gdpr-fine-means-for-big-data-analytics-300781794.html>> accessed 12 June 2022

Bird & Bird, 'Guide to the General Data Protection Regulation' (May 2020)

<<https://www.twobirds.com/-/media/pdfs/gdpr-pdfs/bird--bird--guide-to-the-general-data-protection-regulation.pdf>> accessed 10 June 2022

Digitaleurope, 'Almost Two Years of GDPR: Celebrating and Improving the Application of Europe's Data Protection Framework' (21 January 2020)

<<https://www.digitaleurope.org/wp/wp-content/uploads/2020/01/Position-paper-on-GDPR-review.pdf>> accessed 12 June 2022

European Data Protection Board, 'Guidelines 01/2022 on Data Subject Rights – Right of Access – Version 1.0' (18 January 2022)

<https://edpb.europa.eu/system/files/2022-01/edpb_guidelines_012022_right-of-access_0.pdf> accessed 12 June 2022

European Data Protection Supervisor 'The History of the GDPR'

<https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en> accessed 12 June 2022

Goncalves A, 'The Top 100 Companies With the Best CSR Reputation' (11 March 2019)

<https://youmatter.world/en/top-100-companies-best-csr-reputation2019-28108/> accessed 12 June 2022

Information Commissioner's Office, 'Guide to the GDPR' (2 August 2018)

<<https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr-1-0.pdf>> accessed 12 June 2022

Joseph C and Chan G, 'How the GDPR Impacts Corporate Responsibility' (2 July 2018)

<<https://www.nortonlifelock.com/blogs/corporate-responsibility/crandgdpr>>

accessed 12 June 2022 Kelly J, 'Data Protection' (20 January 2021)
<<https://www.jisc.ac.uk/guides/data-protection>> accessed 12 June 2022.

Microsoft, 'Corporate Social Responsibility Report 2019'
<<https://query.prod.cms.rt.microsoft.com/cms/api/am/binary/RE3YnSI>> accessed 12 June 2022

Nuttall C, 'BA Hit by Biggest GDPR Fine to Date' *Financial Times* (8 July 2019)
<<https://www.ft.com/content/36f3272e-a19e-11e9-974c-ad1c6ab5efd1>> accessed 12 June 2022

Scroxtton A, 'BA Breach Penalty Sets Precedent for Future Effectiveness of GDPR: The 90% Reduction in the Fine Levied on BA Over a 2018 Data Breach has set Legal Experts Talking About the Ramifications for the Future of Data Protection' (20 October 2020) <<https://www.computerweekly.com/news/252490725/BA-breach-penalty-sets-new-GDPR-precedents>> accessed 12 June 2022

Stobierski T, '15 Eye Opening Corporate Social Responsibility Statistics' (2021)
<<https://online.hbs.edu/blog/post/corporate-social-responsibility-statistics>> accessed 10 June 2022

West E, 'ICO's One-Two Punch Hits British Airways & Marriott with GDPR Fines' (10 July 2019) <<https://www.businesstravelnews.com/Global/ICOs-One-Two-Punch-Hits-Marriott-with-GDPR-Fine>> accessed 12 June 2022

Yaros O, 'GDPR Fines – Lessons From Competition Law' (December 2018)
<<https://www.mayerbrown.com/en/perspectives-events/publications/2018/12/gdpr-fines---lessons-from-competition-law>> accessed 12 June 2022