

LEGAL REPORT:

Cabinet Office Interference with the Information Commissioner's Office - Analysis of Dominic Cummings' Testimony

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Executive Summary

This legal report examines the implications of oral testimony given by Dominic Cummings on 26 May 2021 to the Joint Session of the Health and Social Care Committee and the Science and Technology Committee. The testimony describes a directive, orchestrated via the Cabinet Office, instructing the Information Commissioner's Office (ICO) to effectively suspend enforcement of the GDPR in relation to COVID-19 workstreams. Cummings' own admission acknowledges the probable illegality of this action. This report identifies

multiple legal and constitutional breaches, concluding that the instruction was likely wilful, reckless and unlawful and may warrant investigation under criminal and public law frameworks.

Source Statement

Dominic Cummings - 26 May 2021 Oral Testimony
(Parliament.uk Official Record):

"At the end of February, I had got the Cabinet Office to call the ICO and basically put out a notice that just said, 'If you are working on COVID, assume that what you are doing is legal, in terms of GDPR.' That was a completely extraordinary thing; no one even knew if that itself was legal - it almost definitely wasn't."

Factual Breakdown

Timeframe: Late February 2020

Instruction Origin: Dominic Cummings, acting from within 10 Downing Street, using the Cabinet Office

Target Body: Information Commissioner's Office (ICO)

Directive: Public bodies and contractors working on COVID-related matters should assume legal compliance with data protection laws, particularly the GDPR

Acknowledged Legality: Cummings concedes the directive was likely unlawful

Legal Analysis

1. Violation of the UK General Data Protection Regulation (UK GDPR)

Under the UK GDPR and the Data Protection Act 2018:

Lawfulness (Article 5(1)(a)) - Personal data must be processed lawfully, fairly and transparently.

Accountability (Article 5(2)) - Controllers must be able to demonstrate compliance.

Legal basis (Article 6) - Processing must rely on one of the lawful grounds.

Instruction Impact:

Directly undermines lawful basis requirements.

Circumvents obligations of data controllers and processors to conduct DPIAs (Data Protection Impact Assessments).

Invites unlawful data processing by authorising reliance on assumption rather than evidence or legal review.

This constitutes an instruction to breach primary legislation.

2. Undermining Regulatory Independence (ICO)

The ICO is an independent statutory regulator under the Data Protection Act 2018.

Section 114(2) DPA 2018 affirms that the Commissioner “must act independently.”

Executive interference is constitutionally improper and risks breaching principles of separation of powers.

By “getting the Cabinet Office to call the ICO,” the executive overstepped its bounds. Even informal pressure of this kind can constitute unlawful interference if it shapes or distorts regulatory conduct.

3. Misfeasance in Public Office

Elements of the tort:

- Public officer exercising powers in course of public functions;
- Acted knowingly beyond their powers or with recklessness;
- Knew or was recklessly indifferent to the risk of harm to rights or legal obligations.

Dominic Cummings, a senior advisor to the Prime Minister, used executive apparatus (Cabinet Office) to instruct a regulator to act contrary to its statutory duties. His own admission - "*it almost definitely wasn't* [legal]" - satisfies the recklessness and wilfulness criteria.

This action meets the threshold for misfeasance in public office, especially as it impacted fundamental privacy rights protected under Article 8 of the ECHR.

4. Breach of Constitutional and Public Law Norms

Violates the Rule of Law, a constitutional principle requiring all public power to be exercised lawfully.

Breaches the Nolan Principles of Public Life:

- Integrity: Avoiding placing themselves under obligation to outside organisations.
- Accountability: Being answerable for their decisions.
- Honesty: Being truthful about the legal basis for public policy.

No record exists of legal advice having been obtained prior to this instruction. That itself constitutes a failure of accountability.

Conclusions

Dominic Cummings' testimony contains a clear admission of the following:

- That he used the Cabinet Office to pressure the ICO;
- That the pressure resulted in a relaxation or distortion of the ICO's independent role;
- That this action was taken in the absence of legal justification;
- That the individuals involved knew or believed the action to be unlawful.

Such conduct:

- Invites criminal and civil liability (misfeasance, data breach consequences);
- Justifies urgent inquiry and investigation by the CPS and/or judicial review of any impacted decisions;

- Supports a broader contention of executive overreach and regulatory capture during the COVID-19 response.

Recommendations

1. Referral to the Crown Prosecution Service for assessment of whether misfeasance in public office or other criminal breaches may have occurred.
2. Referral to the Information Commissioner's Office for a retrospective assessment of internal responses to Cabinet Office interference.
3. Referral to Parliament's Public Administration and Constitutional Affairs Committee (PACAC) to assess constitutional impropriety.
4. Inclusion in any judicial review proceedings or public interest litigation relating to improper suspension or distortion of data protection rights during COVID-19.

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Supporting Documents:

Oral Evidence Transcript (26 May 2021), Cummings

Available at –

<https://committees.parliament.uk/oralevidence/2249/html>

GDPR and DPA 2018 extracts - In annexed Schedule

Relevant case law on misfeasance - In annexed Schedule

END OF REPORT

Evidential Schedule

Legal Foundations Supporting Allegations of Misfeasance and Data Protection Breach

1. Legislative Extracts: UK GDPR & Data Protection Act 2018

UK General Data Protection Regulation (UK GDPR)

- Article 5 - Principles relating to processing of personal data

Article 5(1): Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');

(b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes ('purpose limitation');

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation');

(d) accurate and, where necessary, kept up to date ('accuracy');

(e) kept in a form which permits identification of data subjects for no longer than is necessary ('storage limitation');

(f) processed in a manner that ensures appropriate security ('integrity and confidentiality').

Article 5(2): The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

- Article 6 - Lawfulness of Processing

Processing shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent;

(b) processing is necessary for the performance of a

contract;

(c) processing is necessary for compliance with a legal obligation;

(d) processing is necessary to protect vital interests;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

Data Protection Act 2018 (DPA 2018)

- Section 114 - Independence of the Commissioner

Section 114(2): “The Commissioner must act with complete independence in performing [his/her] functions and exercising [his/her] powers under the data protection legislation.”

2. Case Law on Misfeasance in Public Office

Three Rivers DC v Bank of England [2000] 2 WLR 1220

Court: Court of Appeal

Facts: The case arose from the collapse of the Bank of Credit and Commerce International (BCCI). The liquidators alleged that the Bank of England had knowingly licensed BCCI despite knowing it was unsafe, thereby committing misfeasance in public office.

Legal Principle: Clarified that misfeasance requires targeted malice or reckless indifference to the lawfulness of one's actions and the resulting harm.

Quote (Lord Steyn): *"Reckless indifference to the illegality of the act and to the consequences of the act is sufficient."*

Significance: Establishes liability where a public officer knowingly or recklessly acts outside their lawful authority.

Elguzouli-Daf v Commissioner of Police [1995] QB 335

Court: Court of Appeal

Facts: Concerned police failure to act properly in charging or releasing arrestees, raising questions of unlawful detention and misuse of authority.

Legal Principle: Misfeasance applies where a public officer abuses powers with deliberate or reckless disregard for legality.

Quote (Steyn LJ): *“Misfeasance... is the deliberate or reckless misuse of power.”*

Significance: Recognises misfeasance where systemic or intentional procedural failures exist.

Watkins v Home Office [2006] UKHL 17

Court: House of Lords

Facts: A prisoner alleged interference with his legal mail, breaching constitutional rights. Financial damage was not demonstrated.

Legal Principle: Where constitutional rights are violated, proof of financial loss is not required to sustain misfeasance.

Quote (Lord Bingham): *"It is not necessary to prove loss if the right interfered with is of fundamental constitutional importance."*

Significance: Affirms the gravity of interfering with constitutional rights such as access to justice or privacy.