



THE OFFICE OF THE
**DATA PROTECTION
COMMISSIONER**

Annual Report

1 January 2017 - 24 May 2018

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Foreword

Welcome to the Annual Report for the Office of the Data Protection Commissioner for the Bailiwick of Guernsey for 2017 and up to May 2018 which I am very pleased to present.

In light of the decision taken towards the end of 2017 by the governments of the Bailiwick of Guernsey and Jersey to move away from a pan-Island regulatory model for data protection, this report covers only matters relating to the Bailiwick of Guernsey although many events and activities were attended in a pan-Island capacity.



Much of the conversation around data protection during this time, both locally and internationally, related to preparation for the General Data Protection Regulation (GDPR) which came into force across the European Union on 25 May 2018.

Large and small jurisdictions alike dedicated significant resources to ensuring readiness for the new legislation in the lead up to May. It is also true that there remains much uncertainty about how individual member states will implement specific key elements of the GDPR which despite being a Regulation (and therefore with direct effect) provides flexibility for individual jurisdictions in important areas such as exemptions and the age at which a child is afforded higher protections. Whilst allowing for rules to be adapted for member states, it does add to the complexity for organisations processing data across a number of jurisdictions. Regulators in Europe and beyond must remain alive to the challenges this poses for those tasked with compliance. Our task is to ensure the legislative requirements deliver for individuals' rights and the best way we can do that is to ensure the compliance obligations for controllers and processors are achievable.

Although outside the European Union, the Bailiwick committed early to ensuring regulatory reform which has seen its citizens provided with updated and improved rights for this digital era as well as ensuring the continued free flow of data across its borders. The significant social as well as economic benefits of reform provide us with a unique opportunity which requires the full commitment of government, industry, ourselves and the community if we are going to take full advantage.

The Data Protection (Bailiwick of Guernsey) Law, 2017 was drafted throughout the year and was approved by the States of Guernsey in November. After Privy Council approval in early 2018 it came into force on 25 May that year, at the same time as GDPR.

Early in 2017 a meeting was held in Brussels with the European Commission to commence dialogue in respect of our adequacy position. The Bailiwick was recognised as an adequate jurisdiction for the purposes of the EU Directive 95/46/EC (the European regulatory framework that was in place prior to the GDPR). The continuation of this position is a priority for us and we are pleased to have had the opportunity to meet with the European Commission so early in our law drafting project. Our thanks go to the Channel Islands Brussels Office who continue to be extremely supportive of the work the Islands are doing.

Wisely, the States of Guernsey has provided for transitional relief in a number of areas which has allowed local controllers and processors time to prepare and also allowed my office to provide the necessary guidance and support to help them do so. This pragmatic approach to reform is to be welcomed and will position local businesses strongly in the months ahead.

Planning for the reform implementation project gained momentum throughout the year. At my office we understand the enormity of the task ahead and there can be no shortcuts. We have limited resources at our disposal but we worked tirelessly to communicate information about the impending reform to all sectors. Data is taking on a new role for all of us and effective regulation is necessarily taking on a much higher priority. If we are to deliver on the requirements of the new regime we recognise that we need to transform ourselves. This will not happen overnight and any major change needs to be handled intelligently and in partnership with all stakeholders. The depth and breadth of reform calls for more than a veneer of compliance and it requires a multi-disciplinary approach. I am clear that ineffective legislation undermines the legitimacy of the entire area and not applying the law is worse than not having a law at all. We have undertaken an honest evaluation of where we are and where we need to be and have instigated a robust, carefully considered plan to deliver on the identified objectives.

The States of Guernsey has committed to providing funding for the implementation of reform for our office to allow us to create a new fit for purpose regulatory office with the capability of delivering on the new obligations. Work commenced during 2018 to develop a permanent new funding model. Businesses large and small are working against a challenging global economic backdrop and for every penny we spend in providing for regulatory oversight we must be transparent, accountable and clear about our objectives. Those we regulate need to have absolute confidence in us and in the integrity of our actions. Equally, those who seek to exercise their legal rights need to be confident that we will do our job without fear or favour. We are committed to earning that confidence from all parties.

Our plans are ambitious and we make no apology for that. Doing this well will position the Bailiwick to deliver on the demands placed upon it by the new legislation, it will also harness the opportunities that await well regulated jurisdictions in this data driven era. We are part of a race to the top to deliver high quality regulation, skills and compliance standards. Data protection is taking on truly global importance and being a small jurisdiction need be no barrier to success. The States of Guernsey has set out its vision for the digital era and with data protection reform an integral part of that vision, we want to continue to build a new regulatory future for the Bailiwick, one which benefits all parties and which stimulates innovation as much as it protects individuals' rights. Despite some claims to the contrary, I firmly believe that enlightened regulation allows for these two important elements to no longer be seen as mutually exclusive. Good data protection needs to be understood as part of the solution, not the problem, in this internet age when trust and confidence is increasingly key for successful, sustainable relationships.

Whilst the GDPR has been the topic of most conversations around Data Protection, we must not forget that we had legislation in place prior to May 2018. The Data Protection (Bailiwick of Guernsey) Law, 2001 (the 2001 Law) provided a strong regulatory framework for the

processing of all personal data in the Bailiwick. The new legislation undeniably provides a more robust set of rights and responsibilities as well as tougher sanctions and we all need to respond proactively to these. However, for those who took their previous legal duties seriously, the changes have been entirely achievable.

What does need to change is the appreciation of how fundamental and how valuable data is to any organisation. Equally how vulnerable it is when proper attention is not given to its care. My aim is for local organisations to understand the importance of compliance, not simply because they are concerned about sanction, but because they recognise the importance of looking after such a valuable asset. This often needs a re-evaluation of the culture of an organisation. Data protection can no longer be the sole domain of a compliance officer or IT support. There is not one area of any business that does not need to step up and take ownership of this issue. It must start at board level and every member has a huge responsibility to lead from the front in this area. Culturally, what is your business approach to data and its protection? The tone set in the boardroom will always filter across the whole organisation. The greatest vulnerability for any business in respect of data security is always going to be staff. So, across the whole of any organisation, each and every member of staff has a role to play. Encourage ownership and accountability for compliance. Encourage your staff to come up with ideas about how to look after data better. And importantly, keep your staff trained and informed about the risks - they will always be your best line of defence.

I have been hugely encouraged by the approach to this locally. My staff and I have attended a great number of events where we have been invited to provide an update on the GDPR and the local data protection reform project. Without exception, those events have been hugely positive. We cannot pretend to have all the answers, but we can commit to working hard to engage and communicate meaningful messages. All such events are invaluable for us as they give us the opportunity for direct conversations with the regulated community and allow that community to connect with us. I was particularly pleased to be invited to speak at an event aimed specifically at non-executive directors. Board members, regardless of sector, are uniquely placed to be able to influence the entire organisation. They need a good knowledge of many areas and data protection is now another, important, addition to that list. Individuals working in all areas, but especially areas with direct influence such as members of a board, should not underestimate the impact their own approach can have on their organisation.

By engaging in conversations about the tangible benefits of looking after data, for us as individuals, for our economy and for our Bailiwick, we can move from an environment in which data protection compliance is seen as a rather tiresome tick-box exercise to being something absolutely core to every business and if done well could transform the jurisdiction. There is nothing stopping us from becoming a centre of excellence for data protection.

Now is the time for us to change the nature of the conversation, from one of considering the protection of data as a regulatory burden, to one of extraordinary and unprecedented opportunity. The world is changing fast and the world of data is changing faster. Those who accept and embrace the significant responsibilities that come with the opportunities will

undoubtedly have an edge. As a small jurisdiction we can be nimble and responsive and as we have better direct access to the regulated community than larger jurisdictions we can also communicate a strong and workable message. If there was ever an opportunity for this small Island to punch above its weight, it's now.

Emma Martins

Data Protection Commissioner – Bailiwick of Guernsey

Governance Statement

The position of Data Protection Commissioner was established in the Data Protection (Bailiwick of Guernsey) Law, 2001. Under the terms of the EU Directive 95/46, the Commissioner must be independent of government and this has been enshrined in legislation. In Guernsey the sponsoring department for the Office was the Office *of the* Committee *for* Home Affairs. Under the 2001 Law, the Commissioner was accountable to the States of Guernsey for the exercise of statutory functions and was subject to States audit.

Risks: Risks are routinely assessed.

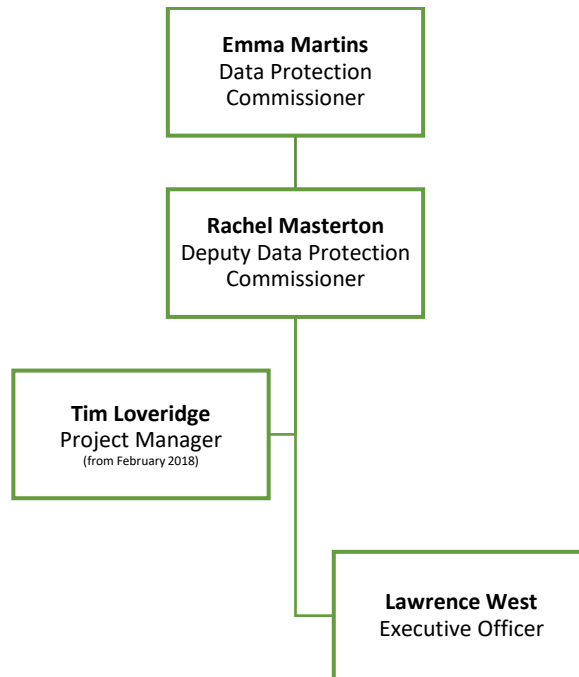
Budgeting: The requirements of the new GDPR equivalent legislation are such that the Office needs additional resources, over and above the budget already agreed for 2018. Failure to secure this additional funding will impact adversely on the ability to undertake the new statutory functions.

IT strategy: The Office has taken the extremely important step of moving away from government IT support. Independence is a crucial part of successful data protection regulation and we must ensure our own data is held securely and independently. Preparation has started on the major internal IT reform needed to deliver the new legislation.

Resources: An important element of our work is to ensure individuals are informed of their rights and empowered to raise concerns. If we do this well, we are then faced with managing the volume of enquiries and complaints. Not only does our workload expand year on year, the increased complexity of cases is also noticeable. Managing the volume of work as well as expectations at the same time going through significant changes will be a challenge for us.

Independence: In order for us to be an effective regulator and to deliver on the new Law's requirements, we need to ensure a workable and sustainable funding system as well as a clearer guarantee of independence from government.

Office Structure



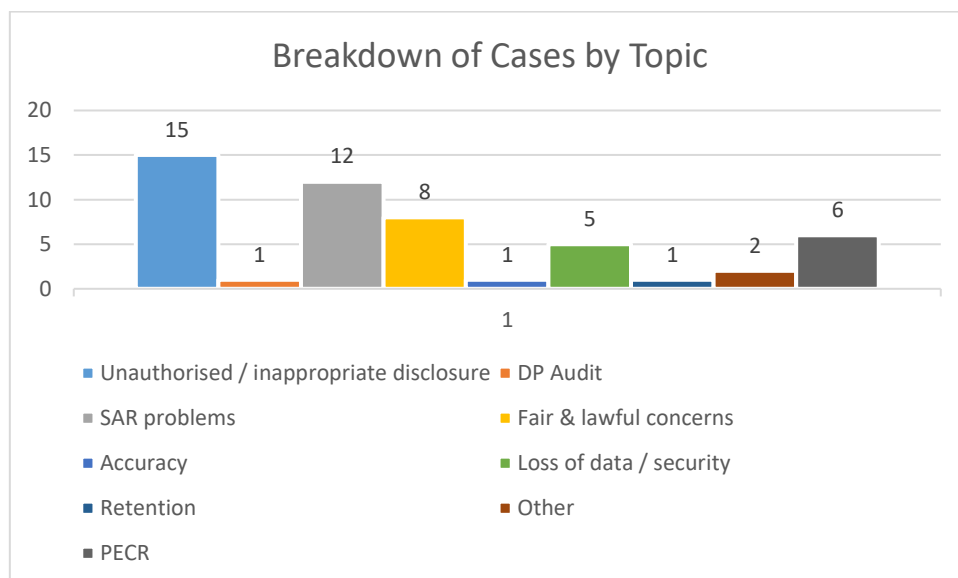
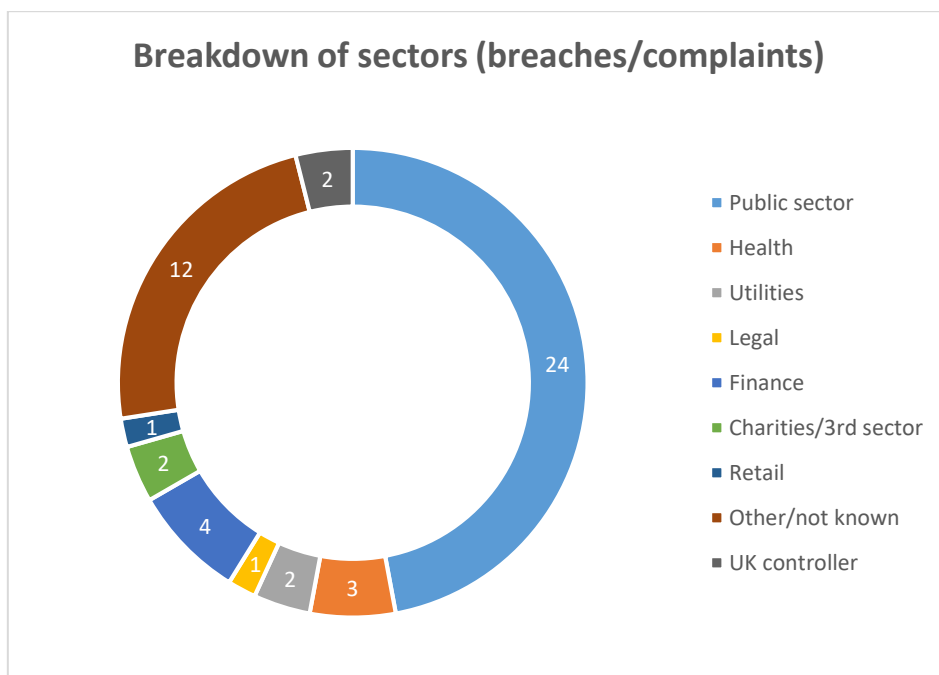
Operational Statistics

Total cases – 51

Seven of the cases were self-reported breaches; the remaining 44 were formal requests for assessment.

Six cases were related to Privacy and Electronic Communications Regulations (PECR) matters (enshrined in local law in the European Communities (Implementation of Privacy Directive) (Guernsey) Ordinance, 2004). The remaining 45 were data protection complaints.

Two Information Notices were served.



Events

January 2017

- Island FM interview
The Commissioner was interviewed about the proposed data protection reform.
- Chamber of Commerce magazine - leader

February 2017

- Meeting in Brussels with European Commission Representatives and CIBO



March 2017

- Sure Breakfast Seminar (speaker)

April 2017

- IAPP conference, London



Caroline Criado-Perez discussing data, women's rights and online abuse at IAPP

- Spring Conference of Data Protection Authorities, Cyprus



- Cyber and Data Protection Conference, Carey Olsen (speaker)

May 2017

- GDPR Conference, Isle of Man (panellist)



Mr McDonald, the Data Protection Commissioner for the Isle of Man opening the event

June 2017

- ADPO launch (speaker)



September 2017

- NED Forum (speaker)

October 2017

- Data Conference (speaker)

November 2017

- GTA GDPR conference (speaker)
- GIFA GDPR conference (speaker)

January 2018

- Delivering Accountability under the GDPR - Dublin
- BIIDPA – GDPR Preparation – Manchester

February 2018

- Digital ACE – Safer Internet Day (part of organising team)

March 2018

- Chamber of Commerce Conference (speaker)

- PA Network Event/PWC International Women's Day Radisson Jersey. (panellist)



- Start-Up Guernsey Event - Digital GreenHouse (speaker)
- Ogier In-House Briefing. (speaker)
- NED Forum. Les Cotils. (speaker)
- IoD Digital Breakfast Event. St James



- Sports Commission DP Awareness Session (speaker)
- Youth Groups DP Awareness Session (speaker)
- Parish Officials DP Awareness Session (speaker)

April 2018

- IAPP Conference. London.

- Common Thread Network - London



- Mourant Ozannes in-house briefing. (speaker)
- Chamber of Commerce Conference (speaker)
- GACO Conference. St James. (speaker)



- ICSA Conference. St Pierre Park. (speaker)



May 2018

- Spring Conference. Tirana, Albania



- Carey Olsen Conference. St Pierre Park (speaker)
- Chamber of Commerce Dinner. Beau Sejour
- Guernsey Data Protection Authority inaugural meeting

Data Protection (Bailiwick of Guernsey) Law, 2017 Update

Approval of and Enactment of the New Law

The States of Deliberation approved the new Data Protection (Bailiwick of Guernsey) Law, 2017 on 29 November 2017. This then received royal assent from the Privy Council in early 2018, in time for its commencement on 25 May 2018.

In addition to the primary law, the following pieces of subordinate legislation were also enacted:-

- The Data Protection (Commencement, Amendment and Transitional) (Bailiwick of Guernsey) Ordinance, 2018
- The Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinance, 2018
- The Data Protection (International Cooperation and Assistance) (Bailiwick of Guernsey) Regulations, 2018
- The Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018

Governance and Independence

In order to bring the Bailiwick's regulatory regime in line with that laid out within the GDPR, steps were taken at the beginning of 2018 to further separate the ODPC from government. The Data Protection (Bailiwick of Guernsey) Law, 2017 brings into being the Data Protection Authority, to provide oversight, direction and accountability for the data protection regulator in the Bailiwick.

The Authority comprises the following individuals:-

- Richard Thomas CBE as Chairman (five-year term)
- Simon Entwisle (five-year term)
- John Curran (five-year term)
- Christopher Docksey (four-year term)
- Mark Lempriere (four-year term)
- Jennifer Strachan (four-year term) and
- Emma Martins, Commissioner (non-voting member)

Work was also undertaken to separate the ODPC from the financial and human resources management that had been provided by the States of Guernsey in order to reinforce the independence that was expected post-May. The services of a project manager were engaged to assist with this together with the separation of IT functions from the pan-Island arrangements, to find the ODPC office accommodation suitable for its expanding remit and to secure the necessary funding from government. This enabled staff to devote more of their time to preparing Bailiwick organisations for the changes.

Guidance and Resources

To assist controllers and processors prepare for the new Law and to advise individuals of their new and enhanced rights, 19 guidance notes were created and made available on the ODPC's website. In addition, a number of tools and resources were produced to supplement the guidance provided.

As 25 May 2018 approached, the ODPC saw a marked increase in the number of telephone calls and email enquiries as controllers and processors sought assistance and further guidance as to how the law applied to them and their operations. This was encouraging as it meant the Bailiwick organisations were engaging with the impending changes and was seeking to tackle them proactively rather than waiting till something went wrong.

Staffing

The increased functions and powers for which the ODPC would be responsible under the new Law meant an increase in staff numbers was necessary as well as the developing of new capabilities. In early 2018 efforts were made to recruit to key roles, such as communications, office management and case handling meaning headcount had expanded from 3 in January to 5 with 2 impending new joiners by 25 May.



Guernsey Data Protection Authority Members

Income and Expenditure Account for the year ended 31 December 2017

	£	2017 £	£	2016 £
Income:				
Registry fees		<u>93,058</u>		<u>89,960</u>
Total income		93,058		89,960
Contribution from States of Guernsey		<u>115,700</u>		<u>116,000</u>
Net income		208,758		205,960
Operating expenses:				
Manpower costs:				
Staff salaries, social security and pension contributions	153,167		116,528	
Supplies and services:				
Total costs (to include but not limited to)	24,862		22,905	
IT development, maintenance & software				
Books & publications				
Legal fees				
Conference and training fees				
Pan-Island travel				
Meals and entertainment				
Public Relations				
Public relations	8,416		2,770	
Administrative costs:				
Total costs (to include but not limited to)	4,839		4,475	
Printing and stationery				
Telephone charges				
Postage				
Other administrative costs				
Premises and maintenance:				
Total costs (to include but not limited to)	6,248		4,039	
Utilities (incl. Electricity and water)				
Rent				
Finance costs:				
Bank charges	0		0	
Total operating expenses		<u>197,532</u>		<u>150,717</u>
Excess of income over expenditure		11,226		55,243

Accounts for 2018 will be included with the Guernsey Data Protection Authority's Annual Report for the period from 25 May 2018 to 31 December 2018.