

Speech by Bailiwick Data Protection Commissioner Emma Martins at the Data Protection and Privacy Leaders Conference in Reading on 6 October 2022

Learning to Love Regulation - one milk bottle at a time

Why regulation matters and why it needs to be seen as one element of a bigger picture that needs to recognise the power and harness the potential of human communication and connectivity. In better communicating the shared values that underpin data protection laws, we can all play a part in securing better outcomes.

It may seem a bit odd to talk about milk bottles, but there is method to my madness, so please bear with me...

The first thing I want us to do is take a moment to appreciate how important these events are, these moments are. They are moments where we have a bit of space and time to reflect on what's happening, what we are doing, what we want to be doing. We don't do enough of that, and we really do need to be doing it more.

We need to really resist this 'move fast and break things' attitude which has been the mantra of big tech – well, not just big tech, all tech - for too long.

Because we are on a certain trajectory – and that is a result of people's actions and inactions. And sometimes we only get real clarity of that direction of travel when we pause for a bit.

And please never think that your view doesn't matter, or your actions don't matter if you work in a junior role or for a small organisation. The jurisdiction my office regulates is tiny – but the people in it matter just as much as the people in larger countries.

I also think it's absolutely critical for us to understand why data protection matters. It is too easy to launch into the HOW without understanding the WHY. I just think that we engage on a completely different level when we make that connection.

So, let's take a moment to look at the WHY.

I think that nothing illustrates it more graphically and viscerally than this image (*offices of the German Census Bureau from "The Nazi Census: Identification and control in the Third Reich" by Cott Aly and Karl Heinz Roth, translated by Edwin Black*) and if you are a bookworm, I recommend the whole book.

The Nazi Census documents the origins of the census in Germany, along with the parallel development of IBM machines that helped first collect data on Germans, then specifically on Jews and other minorities. It examines the history of statistical technology in Germany, showing how census data was collected on non-Germans in order to satisfy the state's desire to track racial groups for - what they described as – "security reasons". We know all too well what the end result of that was.

"European data protection laws include the hidden agenda of discouraging a recurrence of the Nazi efforts to control the population, and so seek to prevent the reappearance of an oppressive bureaucracy that might use existing data for nefarious purposes. This concern is such a vital foundation of current legislation that it is rarely expressed in formal discussions. This helps to explain the general European preference for strict licensing systems of data protection...thus

European legislators have reflected a real fear of Big Brother based on common experience with the potential destructiveness of surveillance through record keeping. None wish to repeat the experiences endured under the Nazis during World War II.”

(Commissioner Flaherty – British Columbia)

Once we get that, everything changes – doesn’t it?

Just look at what sort of data the law thinks needs the greatest protection – there’s a reason for that...

And I so wish that we would express it more in discussions and we wouldn’t allow it to continue to be a hidden agenda that Commissioner Flaherty talked about – we should be shouting it from the rooftops, shouldn’t we?

The data protection community really is a wonderful community. We get the **why** and we do our best to help with the **how**. Not always easy – DPOs do not always have an easy time.

And the challenge has got to be, for all of us, how to move these issues beyond the professional data protection community – to everyone.

That’s a big ask. But just because something is difficult doesn’t mean we don’t try or we give up trying. And we mustn’t give up because the **WHY** is too important.

There is no-one, not a single human being for whom this does not matter now. Whether you care, or not. Whether you know, or not. Everything in our lives, about us, is ‘datafied’.

The less we engage, the less we care – the less our voices will be heard, the less our values will be part of the conversation, the less our values will be embedded into the technology and the processes that shape our lives. That’s already happened too much so this is not a frivolous exercise – it’s a vital one.

Interested, engaged, and empowered individuals will influence business that want to attract, and keep, them. (Look at how Apple are pushing data privacy in their advertising)

Interested, engaged, and empowered individuals will challenge poor standards.

Independent and effective regulators will be there to step in when things go wrong.

But, not to do ourselves out of a job, we surely do not want to wait until things go wrong.

Think of it like road safety – we can build safer roads and encourage safe driving, or we can buy lots more ambulances and train lots more paramedics that can swoop in when there are accidents.

Of course, it’s not a choice of one or the other, the reality is that it has to be both but surely, we want to put real concerted effort into avoiding accidents. So, we need a thoughtful, thought through strategy about how we use our limited resources to achieve maximum benefit – preventing as much harm as possible.

Thinking about road accidents and harms is easy. Its visceral. Its less easy to think about data harms. But let’s be clear, they are very real.

So this ‘move fast and break things’ saying – we need to be really clear that when we say ‘break things’, these ‘things’ are us, they are people.

At our office we set about thinking hard about how we can build an office that is fit for purpose for the new data protection era.

We set up processes, we trained staff to deal with complaints. We are good at that now – we've had a few years to bed good processes and good governance in.

In a way that's the easy bit.

We can have shiny new ambulances, well trained paramedics – but by definition, the harm is already done when they needing to be called.

The tougher gig is how we do something meaningful to build a culture, a community, an economy that understands the harms and actively seeks to build things in to prevent them – to engage with the huge benefits and opportunities that come with looking after data well.

Firstly, I want to say that I think one of the first things we need to do is get better, more inclusive with our language.

Again, if we are in a lovely data protection bubble, talking about data subjects, controllers, SARs, BCCs etc. that's all lovely. But for everyone outside of that – its unfathomable. If even the language is something is unfathomable it's going to be a huge turn off. We hear a lot about bias in data but if we do not strive for a more inclusive conversation, we are just as guilty.

Secondly, we need to make it real.

Data is not 1s and 0s, it's not clouds, it's not spreadsheets, it is people. But that's not what people think of when we talk about data protection.

And how to change that, how to make that connection was a big part of our thinking.

As a regulator, in a small jurisdiction, how do we start to do that – how do we promote data protection in a meaningful way, beyond conversations about eye-watering fines which can feel very remote. How do we make it real.

I was prompted to reflect on what I call the 'taxi driver effect'

It started with a couple of taxi trips but it is coming across anyone who doesn't know you and you have a brief opportunity to chat.

Invariably it would start 'what do you do for a living' or similar. I would tell them and wait for the inevitable eyeroll. 'Oooh – that sounds fascinating' (heavy irony) or 'government red tape stuff'

I would then make it my mission to talk them through the way in which data they and their loved ones produce, is produced about them, some of which they were aware of, most of which they weren't – the way that shaped their life, their experiences, their futures.

Almost without exception, by the end of the chat I would get 'so I can ask for that data, can I?', 'so I can do something about that then can I?' you get the gist...

The power of that human-to-human connection. Making it real for someone, helping them to connect the issue with themselves – not looking at it as something only about other people, about big regulators or social media giants – it's about them. Human beings respond to other human beings, particularly other human stories.

At the same time, I heard a remarkable story about blue tits –

In the UK in the 1920s, when glass milk bottles were delivered to the doorsteps of houses people started noticing holes in milk bottle foil lids on their doorsteps. A small number of resourceful blue tits had made these holes because they had worked out that there was delicious cream beneath the foil. By the 1950s, blue tits all over Britain had learned this.

The birds had shared information that benefited their species by teaching each other how to reach the cream. Some robins were seen finding their way into the bottle, but they did not pass this on in the way that the blue tits did. The blue tits, unlike other species, had gone through an extraordinary learning process.

And so, [Project Bijou](#) was born.

It's a social initiative we have launched that encourages everyone to share stories, knowledge and experiences related to ethical data use, in a way that benefits everyone. Its aim is to support and nurture positive cultural change around how people and organisations view and treat people's data. It seeks to engage people on a human, a cultural level rather than simply on a legal/compliance one.

It is building those human connections – reconfiguring language and engagement one person at a time. It's about a really powerful message - don't do this because someone else is trying to convince or force you to, or threatening you with legal action - but do it because it is in your interests, and everyone's interests, to do it.

Project Bijou is all about encouraging:

- inclusive and accessible conversations and empowering individuals
- informed ethical decision-making
- organisations focusing on human values

This will lead to better protection of people's rights, and harm reduction.

Which is the very thing Data Protection legislation seeks to achieve.

It doesn't matter what you call it, the principles of Project Bijou apply to us all.

Project Bijou is built on the principles of the behaviour of the blue tits and our bird is called 'Bijou'. I would like to tell you quickly why we chose the name and why the name matters.

There is an old parable of the 'Jewel in the Robe'.

It tells of a poor man who goes to visit a wealthy friend. He was treated to wine, becomes drunk and falls asleep. The wealthy friend goes out on business, but before leaving, he sews a priceless jewel into the lining of his sleeping friend's robe. When the poor man wakes up, he has no idea that he has been given the jewel. He sets back off on his way - with very little food and clothing he suffers great hardship. Later he happens to bump into his old friend, who is really shocked at his poverty and shows him the jewel in the robe. The man realises for the first time that he possesses a priceless jewel and is absolutely overjoyed – he had been entirely unaware of the treasure he possessed.

Bijou is another word for jewel.

The point is, we all possess it – sometimes we just need to be shown or reminded – once we know, we know. Once we know, we can share.

Data and its protection is not just about those of us who do it for a living, it's about everyone. We owe it to everyone to do all we can to encourage awareness, engagement, interest.

Law and regulation that is effective and enforced is essential here. But on its own it cannot fix what society does not want to be fixed. If we do not all take some responsibility, the direction of travel will continue to be decided without us and I for one do not want that.

Take a look at our website, but more importantly, take on the Bijou challenge. Just try and engage one person – whether it's a taxi driver or anyone, with these issues, empower them, give them a jewel of their own. Goodness, if all of us here today in this room did that...that would be a bit of magic!

None of us can change the world but we can all be part of a movement that does.

Thank you very much.

- Emma Martins

Data Protection Commissioner

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