

Latest updates from The Office of the Data Protection Commissioner

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THE OFFICE OF THE
**DATA PROTECTION
COMMISSIONER**

Excellence through ethics

Thank you for subscribing to our monthly newsletter – in this first issue we outline:

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Message from the Commissioner

Data Protection did, perhaps, have more publicity in the lead up to the introduction of the General Data Protection Regulation (GDPR) across Europe in May this year, than at any time in its history.

We have also seen, around the world, the exposing of quite extraordinary data breaches which has put data firmly in the public spotlight. So it is possibly less necessary now than it has been in the past to set out the important social and legal place regulation of data has in our modern world.

Data is at the heart of almost everything we do and we have seen the huge impact pernicious use and manipulation of it can have on us as individuals and on our society.

Looking ahead



We recognise the responsibility we have – to ensure the Bailiwick continues to be seen as a jurisdiction with a high quality regulatory framework, one that supports and facilitates good data practices whilst ensuring appropriate sanction for those that do not comply. This is vital for the economic wellbeing of the islands today and tomorrow. Jurisdictions that understand and embrace those responsibilities will have an edge in the data economy. They will also ensure that their citizens are empowered with meaningful and deliverable rights. Never before has data played such a key part of our lives both economically and personally.

We are building a regulatory office that seeks to engage positively and constructively with the regulated community. Getting compliance right from the outset benefits everyone. That is not to say that we are not ready to take action where things have gone wrong and we are working hard on developing robust framework of policies and procedures around all our regulatory activity to deliver on our strategic objectives.

Data is not the impersonal, clinical subject some people take it to be. How our data are handled can have a very real impact on us and on our lives and we recognise the important role good regulation plays in our society. That is why we are building our regulatory model and approach around ethical principles. Not only will this ensure we treat the regulated community fairly and properly, it also means that we will manage ourselves with the highest levels of integrity and accountability.

Our next big project will see reform of the current fee regime for the regulated community. We want to do that in an enlightened and constructive manner; being open about the fact that the funding for our Office has to come from somewhere and committing to ensuring that any new requirement is carefully considered, proportionate and fair. We want to be clear about the benefits having an effective data regulator bring to the Bailiwick as well as the risks to individuals and the economy if we do not.

Decisions we make about our structure and funding will be open and accountable. We commit to complying with the Code of Practice on Access to Official Information as a minimum standard.

- Emma Martins
Data Protection Commissioner

The role of the ODPC

The Office of the Data Protection Commissioner is the independent regulator charged with oversight of the Data Protection (Bailiwick of Guernsey) Law, 2017, a Law which provides the same standards and protections as the GDPR.

Jurisdictions, such as ours, that have strong economic relationships with EU countries have updated their data protection legislation to ensure continued protection of the free flow of data as well as to ensure their citizens have improved and strengthened rights in this digital era.

Read: ODPC Strategic Plan (*we will be publishing an updated plan in quarter 1 2019*)

Data Protection (Bailiwick of Guernsey) Law, 2017

Our Law came into force at the same time as the GDPR and provided for the creation of an independent regulator together with a new governance structure in the form of a Board (the Guernsey Data Protection Authority).

The 25 May was an important day across Europe and for us. The Law came into force and we had our inaugural meeting of the Board before holding an official launch event.

Since then, our Board has had a further meeting to progress with the operational and legal matters required of them in the Law.

Read: [our resources related to local law](#)

The Data Protection Authority (ODPC's Board)

Our Board comprises 5 voting members and a chair. Each individual commenced either a 4 or 5 year term of service in May 2018, and meet 4 times a year.

Read: [profiles of Board members](#)



Guernsey's adequacy status

An [adequacy ruling](#) from the European Commission ensures continued free flow of data from EU Member States to non-EU jurisdictions.

The Bailiwick's quick response to the EU changes has allowed us to confidently retain our adequacy status, and is recognition of our local legislation's equivalency to the GDPR.

It is likely that our status will be reviewed in 2021/2022 and simply having a law will not be enough to retain adequacy. It is imperative that we can demonstrate that we are delivering on our law's requirements and driving good data governance across the Bailiwick.

Progress since 25 May

GDPR has propelled data protection regulators into a new and challenging environment, more so in small jurisdictions such as ours. Our task now is to ensure we are a regulator that is fit for purpose, proportionate and effective. To that end, we have made the following progress since May 2018:

Funding secured to end of 2019

On 15 May 2018 Policy & Resources Committee approved the investment case and funding for the establishment of the ODPC and its operational costs through till the end of 2019. Thereafter, we

intend to move towards a model that is predominantly funded through the collection of fees from the local organisations who handle personal data.

Online breach reporting introduced

We developed a secure, online system to allow organisations to perform their new legal duty of reporting data breaches to us.

Independent status

The Data Protection Authority officially became an independent regulator on 25 May 2018. This Board provides independent governance and oversight of the Office of the Data Protection Commissioner which performs the day-to-day regulatory function.

New recruits

In order for us to deliver on our duties, between June and August 2018 we recruited three members of staff: an interim Chief Operating Officer, an Office Manager, and a Communications Manager.

Office move

In July 2018 we moved into new premises that allow sufficient office space for our staff. We have created an event space within the office which will allow us to deliver on our statutory requirement to raise public awareness of citizen's data protection rights and to promote awareness of data controllers/processors' legal duties.

Systems and data migration

A key part of our independence from the States has been establishing our own systems, financial controls and infrastructure. This took place during May – August 2018.

Project work

We have commenced projects on: what our funding model from 2020 will look like; re-development of our web-based services to bring in-line with upcoming statutory requirements; best practice in investigation and compliance; best practice in data forensics; and establishing Memoranda of Understanding with key entities.

Brexit implications for data protection locally

We have received an increasing number of queries from organisations exploring the potential impact Brexit may have on Bailiwick organisations and data transfers to and from the UK.

- **Current position:** transfers of personal data to the UK are currently deemed lawful under the Data Protection (Bailiwick of Guernsey) Law, 2017 due to the UK's place in the EU and transfers to the Bailiwick benefit from the UK's existing adequacy decision (this was granted under the previous EU data protection regime but honoured for the time being under the GDPR).
- **Post Brexit:** when the UK loses its EU status this will impact what methods UK organisations can use to safeguard transfers of personal data to its shores. UK organisations will need use the additional safeguard measures the GDPR and our local Law provide. The UK government is seeking a resolution to this at a national level and it is possible that the exit package negotiated



between the UK and the EU will provide an overarching solution, similar to adequacy. However, until the final exit package is announced what this may look like is unknown.

- **Local readiness:** Local organisations are not alone in desiring some clarity on this matter; it is something likely in the minds of UK and EU based organisations that transfer personal data cross-border. The States of Guernsey have a team considering all aspects of Brexit and once firm information regarding the exit package is known, the Bailiwick will be ready to respond appropriately.
- **Advice:** Keep a watching brief and take some time to understand the personal data transfers your organisation is a part of. This will assist in your compliance in general and should enable any necessary action to be taken in an informed and timely manner once the situation becomes clearer.

Read: [Leaving the EU: the data protection implications of a Hard Brexit for UK businesses with EU data flows and clients](#)

Running costs

The States of Guernsey have approved additional funding for the ODPC for 2018 and 2019 to enable implementation of the new data protection legislation which came into force for the Bailiwick in May 2018.

[View breakdown of funding](#) (correct as at October 2018)

Advice offered after increase in local data breaches

We have published some advice for local organisations after a recent increase in the number of data breaches reported to us. The breach reports received suggest that organisations are exposed to the greatest risk of breach when personal data leaves their direct control, either by post or email.

We offer the following advice to local organisations:

- [INFOGRAPHIC: Advice for sending personal information via post or email](#)
- [INFOGRAPHIC: How to report a breach to us without committing a secondary breach](#)

[Read more about breach reporting here](#)

Advice for sending personal
information via post or email

**REGULARLY
CHECK EMAIL
SECURITY**

Update patches, and if you are making any significant changes think about whether penetration testing is necessary.



**PAUSE, THINK AND
CHECK BEFORE
YOU SEND**

Remove all staff members who are posting or emailing internal documents that contain personal data to their desks. To always double check the recipients are correct and appropriate.



**AVOID
COMPLACENCY**

Consider the potential implications of the information you are handling falling into the wrong hands and take all reasonable precautions to prevent this from happening.



How to report a breach to us
without committing a secondary
breach

Section 42 of the Data Protection (Bailiwick of Guernsey) Law, 2017, places a **legal obligation** on organisations handling personal data to notify us of any personal data breach within 72 hours of becoming aware of it.

You can avoid a secondary breach by **protecting the identities** and the **data** involved in the breach you are reporting to us.

**SECONDARY
BREACH**

Exposes data and identities

e.g. The test details related to Mrs A. Bloggs positive pregnancy test results to Mrs C. Bloggs



**BREACH
REPORT**

Protects data and identities

e.g. At 13:18 on 18 October 2016, I sent Special Category medical data related to a patient's pregnancy to an individual with a central name in error.



Event report: Centre for Information Policy Leadership, Accountability under the GDPR – How to Implement, Demonstrate & Incentivise it (5 October 2018, Paris)

The Data Protection (Bailiwick of Guernsey) Law, 2017 mirrors the GDPR in introducing the new data protection principle of accountability. This principle states that controllers are responsible for, and must be able to demonstrate, compliance with the other [data protection principles](#).

In response to this new principle the [Centre for Policy Leadership \(CIPL\)](#) released [two papers](#) in July 2018 to demonstrate:

- the central role accountability plays in **effective application** of data protection
- how this accountability should be applied in a manner **consistent** with other existing accountability regimes
- the **benefits to stakeholders** that warrant the incentivisation of accountability.

CIPL held an event in Paris in early October to explore this new principle further and to collate the thoughts of data protection authorities and industry. It was clear that accountability was more than a box-ticking exercise and if done well, would instead lead to continuous improvement, building trust with customers and staff and providing a competitive advantage in a time when individuals are becoming more aware of the use and misuse of their personal data.

Accountability also challenges organisations to demonstrate that not only is processing legally compliant but is appropriate, fair and ethical – just because we can, doesn't mean we should.

[Read: 'An Ethical Data Future?' for an introduction to data ethics](#)



Debating Ethics: Dignity and Respect in Data Driven Life (22-26 Oct 2018, Brussels)

Our commissioner, deputy commissioner, and operations & compliance manager represented the Bailiwick at the open sessions of the *40th International Conference of Data Protection and Privacy Commissioners (ICDPPC)*. Over 1,000 delegates joined the conference at the European Parliament for a two-day exploration of data protection, privacy and ethics in our increasingly data-driven lives. Co-hosted by the [European Data Protection Supervisor \(EDPS\)](#) and the [Bulgarian Data Protection Authority](#), the event attracted a myriad of speakers from data protection authorities, tech companies, and NGOs amongst others.

Highlights included a stirring speech from the EDPS himself, Giovanni Buttarelli (*see video below*), and calls from Apple (*see video below*), Google and Facebook for GDPR-equivalent, US-wide data protection legislation.

[Photos and videos](#) of the conference and the text of some of the [speeches](#) can be found on the conference [website](#).

The open event was preceded by a **closed session specifically for data protection authorities**, attended by representatives from 76 countries. Our deputy commissioner was in attendance representing the Bailiwick. Delegates discussed a number of topics including:

- a [roadmap for the future of the conference](#)
- a resolution on the [use of e-learning applications](#)
- a [declaration on ethics and data protection in artificial intelligence](#).

Choose Humanity: Putting Dignity back into Digital

Giovanni Buttarelli, European Data Protection Supervisor



Keynote address

Tim Cook, CEO, Apple Inc



Update on events programme development

We are making steady progress towards starting our public events programme in early 2019. These events are a key aspect of our statutory obligation under section 61 of the Law to **raise public awareness of citizens' rights** and to **promote awareness of datacontrollers/processors' legal duties**.

The programme will commence with a **public/industry-consultation session** where we will ask for attendees' feedback on our events programme's scope and format. We will also be detailing the

sponsorship opportunity we will be offering to organisations to enable them to show support for our public awareness activities.

The public events we are developing as a priority explore these topics:

- What is data?
- Your rights
- End of transition (which falls on 25 May 2019)
- Data ethics & principles
- Data protection in the workplace
- Excellence and Innovation in data protection

Visits from organisations

In the new year we will be offering fortnightly **drop-in sessions** for organisations only, where no appointment is needed.

We will also be introducing a process for organisations to apply for '**study visits**' with us, whereby small groups of staff from a regulated organisation can request an appointment with us to explore a specific issue or topic.

Visits from members of the public

If you are a member of the public we'd like to remind you that you are welcome to drop-in to our office at St Martin's House during office hours. If you are able to call us first this will ensure that we have the relevant member of staff available to help you.



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