



INSTITUTE OF DIRECTORS
IN IRELAND



GDPR - What Directors Need to Know

with Adam Finlay, Partner, McCann FitzGerald LLP

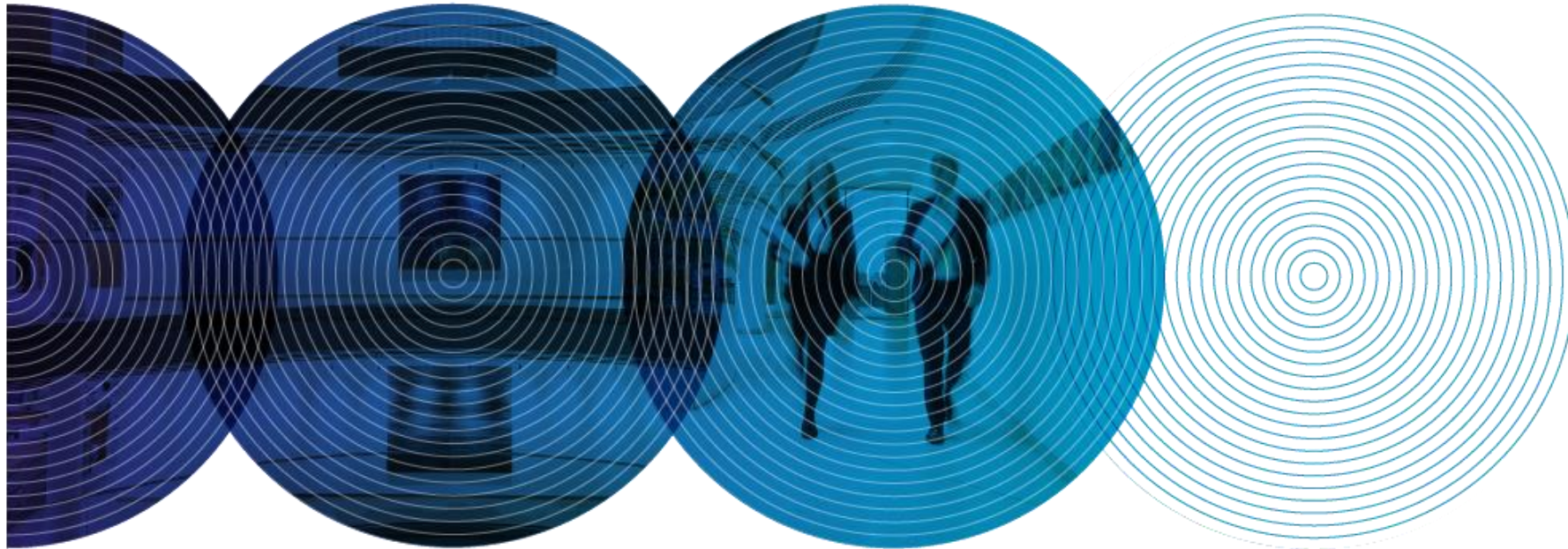
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GDPR – What Directors Need to Know

05 May 2022
Adam Finlay, Partner



What Directors Need to Know

- Approaching 4th anniversary of GDPR, law is being fleshed out by decisions
- Sentiment towards GDPR increasingly negative and concerned
- Recent noteworthy decisions by the DPC:
 - Bank of Ireland (Personal Data Breaches)
 - Limerick City and County Council (CCTV)
 - Department of Employment Affairs and Social Protection (DPO)
- Is your organisation reviewing and updating compliance measures in light of evolving law and guidance?

Extracts from Annual Survey (conducted Dec 2021)

- 89% believe fully or materially compliant
- 77% believe risks of non-compliance are increasing, 69% more concerned now than they were in May 2018
- 70% say data protection part of the management / executive meeting agenda
- 70% have data protection built into change processes
- 59% of those operating hybrid working updated policies and procedures
- 24% reviewed their privacy notices in light of WhatsApp decision

Bank of Ireland (14 March 2022)

- BOI provided inaccurate information to Central Credit Register
- Breaches of security obligations and personal data breach notification obligations
- DPC fined BOI €463,000, issued a reprimand and ordered BOI to remedy non-compliant practices within 90 days
- DPC's decision
 - Broad interpretation of personal data breach (can be 'confidentiality breach', 'integrity breach' or 'availability breach', broad interpretations of each)
 - BOI deemed to have been aware, before it actually was aware, for purpose of 72 hour timeframe for reporting to DPC
 - BOI ought to have notified affected individuals as and when aware

Bank of Ireland (14 March 2022)

- DPC's decision (cont'd)
 - Generic data protection training of staff was insufficient
 - BOI was negligent
 - In order for fine to be effective, proportionate and dissuasive, fine calculated partly by reference to BOI's financial resources

Limerick City and County Council (9 December 2021)

- Council was operating CCTV cameras and systems in various locations
- No legal basis for processing, breached transparency, inadequate DPIA, didn't deal with subject access request, failed to comply with own retention policy, etc.
- DPC fined Council €110,000, issued reprimand and ordered Council to remedy non-compliant practices within 90-120 days
- DPC decision
 - Council did not have sufficiently clear, precise and foreseeable legislative basis for processing
 - Council failed to comply with own retention policy

Dept. Employment Affairs and Social Protection (10 May 2021)

- Dept. amended its privacy statement, was DPO properly involved and/or given improper instructions?
- Art 38(1): *“ensure the DPO is involved, properly and in a timely manner, in all issues which relate to the protection of personal data”*
- DPC’s decision (finding no infringement by Dept.):
 - ‘Proper involvement’ goes beyond DPO being informed, must have opportunity to make meaningful contribution
 - DPO doesn’t have decision making role beyond core tasks, organisation may accept or reject DPO’s advice but must give “due weight” to it
 - Not sufficient for DPO to be involved after decision made in go/no go role
 - Restriction on instructing DPO applies only in relation to DPO’s specified tasks, not all tasks

Selection of DPC Decisions – Key Takeaways

- Compliance measures need to be reviewed, not only against evolving operations but also against evolving law and guidelines
- Potential gap between perception of levels of compliance and actual levels of compliance

Questions?



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