

## **Learning to love regulation, one milk bottle at a time**

*Bailiwick Data Protection Commissioner Emma Martins gave the following speech at the launch of the [Channel Island Data Protection Forum](#) on 6 July 2022.*

“I want to talk a bit about regulation and why I think we need to look at it differently. Also a little bit about how we approach our job at the ODPa in Guernsey.

I do want to say first that I love the way you have framed this event – thinking about risk and how we understand it, react to it, ignore it sometimes – is not only interesting, it’s important because it helps us to understand how we can do things better or differently to get better outcomes in all sorts of areas, including data.

One of the things that has always struck me is the way that we find it so incredibly difficult to really get to grips with the reality of data – the way it impacts, both positively and negatively, our lives. It is seen as such an ephemeral thing. Even the language we use – like cloud – gives a certain feel...that it is not tangible and if something is not tangible, we generally find it pretty hard to really engage with, especially in terms of risks.

For risk that is tangible, such as planes, we are very good at buying into the huge process and indeed costs of harm prevention that goes into making air travel safe.

I fly a fair amount and whenever I am on a bit of a bumpy flight, there is often someone who looks genuinely scared. But equally, we buy that ticket, we get on that plane, we trust our safety to people we have never met. And those people, who have never met us, I am confident, really are doing everything in their power to keep us safe. Some days they take a huge financial hit by grounding the planes because of fog or wind or whatever because they don’t want to risk it, or the rules don’t allow them to. The regulation which sits around it is not seen as problematic – in fact, the *absence* of it would be seen as problematic.

And there are lots of similar examples in our lives, where regulation sits quietly and well behaved alongside us, with us, and we do not baulk at its presence, well not much. Think about speed limits on roads, about safety standards on electrical goods, so many areas of our lives are regulated and we mostly agree that it’s a good and desirable thing. It helps to make our lives better, more protected...safer...less risky...

Moving to the world of data – things are different. As lovely as the world of data protection professionals is, we must also be honest and understand that if you did a straw poll of members of the public, most would not talk of their love of the regulatory framework that sits around their personal data. Also, most people think that conversations about IT are way out of their own knowledge or comfort zone – that that’s something only techies are qualified to do. Now we know that both those positions are flawed – most people do like having their doctor or their bank look after their data properly and most of us also know that the absence of inclusive conversations around technology has led to some very problematic outcomes.

But this disconnect persists and we need to ask *why*, but not only *why*, we need to ask *how can we help get over it*.

We need people to look at regulation not as the burden of regulation, but rather as a way of ensuring they are kept safe, that innovation and progress is safe. There is a danger with technology in this space that we do things simply because we can. We do not do that in any other area of our lives – can you imagine a plane just going as fast as possible because it can? No, the plane goes at the speed that has been determined is safe. The cars we drive go as fast as has been determined is safe. *‘Move fast and break things’* sounds a frivolous motto, but it has been, in my view, a hugely harmful slogan – that has had real world consequences, a slogan which so blatantly gives no thought to whether the place we will end up is the place where we actually want to be.

Those of us working in data – who have the privilege of working in data – see the risks, we see the harms and they are terrifying. But the lack of tangibility does, in my view, have a massive impact on how the community more broadly think about risk in this area.

Data and information security suffers chronically from that and I heard a super quote recently - “Information security is an invisible industry, until something goes wrong.”

And you know what, I think that we cannot afford to wait until things go wrong. We wouldn’t do it with air travel.

We really shouldn’t be doing it with data either. Because when we talk about data protection, about information security we are simply *talking about ourselves, our community, our businesses, our economy*. It really does matter. The task for you as it is for me, is to work out how we can better engage, better influence - but you know, it’s not just about raising awareness, which is really, really, important, we also need to translate that awareness into action – otherwise it is pointless.

As you say on your website – *“Public interest in cyber security has never been higher. However, not everyone knows how to respond. The CIISF public awareness programme reaches the public, educators, policymakers, business and community leaders and professionals.”*

And it’s that ‘responding’ that we now need. That’s the response we need to the disconnect that I talked about.

For sure, Technology can’t fix the things that society doesn’t want fixed. So you are right – and it’s a critical point - this conversation needs to extend beyond our own professional fields – it needs to be much more accessible, more inclusive. That’s a real challenge but the more community work we do, the more non-technical disciplines we involve, the more voices we hear from, the more we speak up ourselves, the better.

Because when we care about something, and we know that it may be under threat, we are much more motivated to do something about it, to take an interest.

And I am clear that we are at a defining point. Data is increasingly our destiny, so we need to care, and we need to know that certain important things are under threat.

And my goodness if the recent events in America, where women are being told to delete certain apps in light of the recent abortion ruling, hasn't been a wakeup call – that this stuff can happen in plain sight, can happen in democracies...

So I think what you are doing across the Channel Islands with this forum is great and it is super important. There are so many shared issues, challenges, risks, and opportunities across the Islands – we can learn and support each other in all those things. The fact that politically they have separated the regulatory bodies does not change any of that.

It's not always an easy sell, winning hearts and minds in this space is challenging. Let's go back to the poor person sitting on the plane that time, fretting about turbulence - it is hard to imagine them fretting in the same way when they open up their phone or tablet and leave a huge and deeply private data footprint, or read their social media newsfeed which no longer seeks to reflect their thoughts but to shape them. Or downloading an app which collects data about their periods.

Of course, these things are not as downright terrifying as a plane crash, I get that. But – they do still matter. It gets to the heart of our rights and our freedoms. That may sound trite but we only have to look at what happened during the US elections, the Brexit referendum, the covid pandemic and more recently the invasion of Ukraine and, as I mentioned, the recent US abortion ruling, to see how powerful these influences can be - how they impact real people in real ways.

But I am an optimist and I really do think things are changing. I think the people behind the vast data processing businesses are starting to be forced to think harder – to move slower and fix things. Goodness, Apple are building an entire advertising campaign around data privacy. That's an incredible thing and well worth taking a moment to reflect on. We need to keep that pressure up. Because I may be an optimist, but I am also a realist. If we don't keep that pressure up, I think that's very, very, dangerous.

I want to talk very briefly about our own approach to regulating this area – and how we try to keep that pressure up using the tools we have available to us. We have thought very carefully about it.

I see it as our job to make compliance as easy as possible and as understandable as possible for our controllers and also to ensure as many people as possible understand their rights, have a voice and are heard. It was not a [law](#) written to dampen innovation or to tie business up in red tape and we must avoid the narrative that spins it that way. It was a law borne from the appalling misuse of people's private information. Only if we understand it against that backdrop can we really, genuinely engage with what it requires us to do.

At the [ODPA](#), you may have seen that our slogan is 'Excellence through Ethics'. But these things have to be more than a slogan, they have to be part of a meaningful strategy.

At the ODP, our [strategic plan](#) is the foundation stone, the real beating heart of our work.

I really do believe that ethics sits at the centre of so much of what we all do. We can see with what is happening in politics across the water that conversations often revolve around culture, values, ethics. Of course, law is important, but it feeds from those things doesn't it and can surely only work effectively if all these things align.

So what do we, at the ODP, see as effective? Well, we have four pillars of activity -

Predict, Prevent, Detect, Enforce.

There are of course relationships between all these things – some obvious, some more nuanced. Essentially, the more we understand and can predict where the problems are going to be, the more we can do to take steps to prevent them. The better we are at preventing, the less we will need to detect and enforce. By definition, investigating complaints and doing enforcement is resource hungry and post-event. Firstly, we are a small team, paid for by our regulated community – we are always very mindful of that. Secondly, when we say post-event, let's be clear that we are dealing with a person, or a number of people, and their personal information. Let's stop thinking about this in terms of ones and zeros and spreadsheets – it's *people*, it's you and it's me.

And going back to the earlier point I made about what I see as a disconnect, we have launched a piece of work to try and tackle that – called [Project Bijou](#). It seeks to shift the conversations around data, to encourage real people to share their thoughts and experiences – to strive for a cultural shift. Because humans respond to other humans. We have lots of wonderful contributors that have given us all sorts of perspectives and the idea is for that to trigger more conversations, more interest, more engagement.

Just to explain the title for today – (“one milk bottle top at a time”) – firstly it would have been very dull just to have a title ‘Emma talks about risk and regulation’, secondly, and there is a serious point here, Project Bijou started when the senior leadership team at our office were in a meeting and someone told us the incredible story of how blue tits share their learning to benefit their species – how a few of them learnt in London in the 1920s how to secure the best cream from milk bottles by making a hole in the foil caps.

A couple of decades later, blue tits all over the UK had learnt this skill. Such a simple story but really profound. If we can give people the tools, the information, the interest – they can benefit, others can benefit, we can all benefit. Again, it's not about behaving in a certain way because someone is telling you to, it's about behaving in that way because you recognise how you and others benefit – individually and collectively.

Again, it's not about saying let's not focus on the law, it's about saying that law is one piece of a bigger jigsaw in our lives and actually the way we engage with it is so heavily influenced by culture and values.

Working in a small jurisdiction can make us feel that we do not have the ability or power to make a difference. I think it's exactly the opposite - I think that it's one of the joys of

working in a small jurisdiction that we have the potential to effect change. I don't pretend to be able to change the world, or even our own Bailiwick, but making that connection to one person at a time, talking especially to young people about their [rights](#) and also their responsibilities as they enter the data-driven workplace – because data is as much about ethics as it is about technology – we want engagement with hearts as well as minds - those small steps matter – they really matter.

And lots of small steps have a habit of turning into bigger ones. There is a lovely quote – “I can't change the world, but I can be part of a movement that does”.

However small the steps we can all take, they are still worth taking. It is a challenging but unbelievably interesting time to be working in this field and we should all take pride in the work we do and the ambitions we have. Never be disheartened when the hard sell really is hard. From a historical perspective, we are still at the beginning of this journey. The beginnings of culture change are never quick and rarely easy.

My aim is that in the future, the protections around data are as accepted and demanded and as accountable and maybe even loved as the protections around our safety when we hop onto a plane. It's in place because industry wants and needs it and because passengers want and need it – not simply because a regulator says it must be so or they are threatened with big fines. Because do you know what, when that happens, there are no losers.

So good luck to you all, and especially to the new pan island data protection forum. What you do really, really, does matter. Thank you CIISF and particularly to Steph and David for inviting me to speak today and also to Richard Field who is attending from Guernsey and who has done so much for the Bailiwick. Together you will all make a formidable team and there has never been a time we have needed your energy and commitment more.”