WILLIAM FRY

Legal News

Welcome to the February issue of Legal News. For further information on any of the topics covered in this edition, please call or email any of the key contacts or your usual William Fry contact person.

Nano Nagle Update – Appeal Allowed in Disability Discrimination Case

In a seminal decision regarding disability discrimination, the Court of Appeal overturned a decision of the High Court relating to a disabled Special Needs Assistant (SNA) who was dismissed on incapacity grounds. The Court of Appeal has vacated the award of compensation of €40,000 which had previously been made to the dismissed employee.

Background

Ms Daly ("Ms Daly") was employed by Nano Nagle School (the "School") since 1998 as a SNA. She suffered serious injuries in a road traffic accident in 2010. Although she achieved partial recovery, she remained confined to a wheelchair. She was keen to return to work in January 2011 and the School sought various expert reports in this regard. In particular, a report was prepared by an occupational therapy assessor (the "assessor"). It stated that Ms Daly could undertake, wholly or partly, nine out of the sixteen tasks required of a SNA. Further to these reports, the School Board concluded that Ms Daly did not have the capacity to undertake the full set of duties associated with a SNA, and nor would she in the future. As a result it would not be possible for her to return to work.

The Legislative Position

The case concerned the interpretation of s.16 of the Employment Equality Acts 1998 to 2015 (the "Acts") which provides at s.16(1) that nothing in the Act is to be construed as *"requiring any person to…retain an individual in a position…if the individual …is not (or, as the case may be, no longer) fully competent and available to undertake and fully capable of undertaking, the duties attached to that position having regard to the conditions under which those duties are, or may be required to be performed."*

Section 16(3)(b) imposes an obligation on employers to take *"appropriate measures, where needed in a particular case, to enable a person who has a disability…to participate in employment…unless the measures would impose a disproportionate burden on the employer."*

Section 16(4) outlines the meaning of appropriate measures as including the *"adaptation of premises and equipment, patterns of working time, distribution of tasks or the provision or training or integration resources".*

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Equality Tribunal, Labour Court and High Court Decisions

Ms Daly made a complaint to the Equality Tribunal on the basis that the School had failed to provide appropriate measures to accommodate her, as a person with a disability, to return to work contrary to s.16 of the Acts. The Equality Tribunal found in favour of the School and Ms Daly appealed to the Labour Court.

The Labour Court allowed the appeal. It held that the School's Board failed to discharge its statutory duty to take adequate measures to provide Ms Daly with reasonable accommodation so as to allow her to continue in employment.

The Labour Court's decision was appealed to the High Court, which upheld the decision. The High Court agreed with the Labour Court's interpretation of s.16 of the Acts and its application of the law to the facts. It also dismissed the School's complaint that the oral evidence of the assessor had not been given proper regard.

The High Court considered the Court of Justice of the European Union (CJEU) decision of *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab* (C-335/11), agreeing with the Labour Court position that "appropriate measures" as referred to in s.16(4) of the Acts included the adaptation of both patterns of working time and tasks. Therefore there was no requirement that Ms Daly be capable of fulfilling all of the duties of her job.

Court of Appeal Judgment

The School appealed to the Court of Appeal, which gave its decision on 31 January 2018.

The finding in relation to the assessor's report highlights the wider context to the findings made. The Labour Court and High Court had more or less ignored the fact that the report stated that Ms Daly would be unable to work in any of the classes, and that there would be a safety issue for Ms Daly, staff and children. Many of the children required hands-on intervention due to their special needs or behavioural issues, and it was stated in the report that two physically able SNAs were required in the classes. As a result, the assessor suggested Ms Daly act as a "floating SNA"; in addition to the two SNAs per class.

The Court of Appeal stated *"[t]he facts are incontrovertible and the Labour Court paid insufficient attention to them."* The court criticised the Labour Court's view that the School had not made attempts to facilitate the idea of a floating SNA, when in fact the School had followed up with its funding body and was refused. It also criticised the Labour Court's view that the floating SNA was not a new role, when it was clear from the assessor's report that it was.

The Labour Court and High Court took the view that there had been no proper consideration of the redistribution of Ms Daly's tasks. The Court of Appeal disagreed noting *"The point is a simple one: the statutory duty is objectively concerned with whether the employer complied with the obligation to make reasonable accommodation. If no reasonable adjustments can be made for a disabled employee, the employer is not liable for failing to consider the matter or for not consulting. It is not a matter of review of process but of practical compliance. If reasonable adjustments cannot be made, as objectively evaluated the fact that the process of decision is flawed does not avail the employee."*

A key point which arose was whether Ms Daly had to be capable of only some of the tasks required of a SNA or all of the tasks required. The Court of Appeal stated: *"Adjustment to access and workplace hours and tasks does not mean removing all the things the person is unable to perform; in general it is reasonable to propose that tasks that are not essential to the position could be considered for distribution and/or exchange. That does not mean stripping away essential tasks, especially the precisely essential elements that the position entails. On a legitimate, reasonable interpretation it is incorrect to demand that redistribution however radical must be essayed no matter how unrealistic the proposal. The section requires full competence as to tasks that are the essence of the position; otherwise subsection (1) is ineffective. The fundamental proviso in section 16(1) must be respected."*

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Comment

The Court of Appeal's judgment highlights the fact that s.16 does not obligate the creation of a new role for a disabled employee.

It remains wise for employers to properly consider the facts of each case. Where there are non-essential tasks which the employee can no longer carry out, it would be sensible to redistribute those tasks where possible. However where an employee can no longer carry out tasks fundamental to their role, this case supports the proposition that this may be grounds for dismissal. Crucially, the employer should also obtain expert reports before making any decision. The employer should be able to demonstrate adequate consideration of these reports and reasonableness on its part.

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Data Protection Bill 2018 is Mixed Bag with Concessions for Insurance Industry and Personal Liability for Directors

The Data Protection Bill 2018 (the "Bill") was published on 1 February 2018. The Bill, which runs to 132 pages, broadly follows the General Scheme of the Bill which was released in May 2017. Here we highlight some of the key points of interest.

- **Reform of the Office of the Data Protection Commissioner:** The Office of the Data Protection Commissioner will be restructured as the Data Protection Commission (the "Commission"). The Commission will be headed by up to three Commissioners for Data Protection, who shall be appointed for terms of between four and five years. The Minister for Justice will appoint one of the Commissioners to be the chairperson, who shall have the casting vote as regards decisions to be taken by the Commission in the event of a tied vote.
- **Age of Digital Consent:** The age of 'digital consent' has been set at 13.
- **Exemptions for Public Authorities and Public Bodies:** Under the Bill, administrative fines can only be levied against a public authority or a public body where it is acting as *"an undertaking"* within the meaning of the Competition Act 2002.
- **Representative Actions:** Article 80.2 of the GDPR, which enabled Member States to provide in legislation that not-for-profit bodies may lodge complaints with supervisory authorities and pursue judicial remedies independently of the mandate of a data subject, has not been specifically transposed into the Bill.
- **Offences Attributable to Company Officers:** Where an offence under the Bill is committed *"with the consent or connivance of, or to be attributable to any neglect on the part of"* a director, manager, secretary or other officer of the body corporate in question, such a person will be liable to be proceeded against personally as if they *"were guilty of the first-mentioned offence".*
- **Exemption for Insurance Industry for Sensitive Personal Data:** The Bill contains an exemption when it comes to processing sensitive personal data for insurance and pension purposes (including where related to the mortgaging of property).
- **Circuit Court to Confirm Fines:** The Bill retains the mechanism proposed in the General Scheme whereby the Circuit Court will be used to "*confirm*" the decision of the new Commission with regard to administrative fines issued.

The Bill is still subject to change as it progresses through Seanad Éireann and Dáil Éireann before becoming enacted as law. However given that the Bill must be enacted in time for both the 6 May 2018 deadline for the Law Enforcement Directive as well as the coming into force of the GDPR on 25 May 2018, the scope for major alteration is limited.

For further information on the incoming GDPR and detailed guidelines on GDPR Readiness, register for **PrivacySource,** William Fry's dedicated GDPR website.

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Irish Aviation Authority required to produce internal documents in Ryanair case

In August 2013, Channel 4 broadcasted an episode of its "*Dispatches*" series, called *"Secrets from the Cockpit".* This programme appeared to allege that Ryanair compromised the safety of passengers, crew and those living under Ryanair flight paths in pursuit of financial gain. There were additional allegations concerning Ryanair's fuel policies and an alleged failure to preserve cockpit voice recordings.

Following broadcast of the programme, Ryanair issued proceedings seeking damages (including aggravated and exemplary damages) for defamation.

Channel 4 delivered a full defence, pleading that the matters dealt with in the broadcast were true. Channel 4 then sought non-party discovery from the Irish Aviation Authority (IAA) and were successful in this application before the Irish High Court in November 2017.

Non-party discovery requires a person to produce documents which are relevant to a case, even if that person is not a party to the case. Channel 4 sought certain categories of the IAA's internal documents and correspondence, which it stated were relevant to the case. The documents requested included documents relating to a report prepared by the IAA in relation to "*fuel Mayday"* emergencies declared on three Ryanair flights. Ryanair had specifically pleaded that Channel 4 had failed to inform viewers of the content of this report.

The IAA raised concerns about the confidentiality of the documents and its obligations under Irish and EU law relating to aviation safety. The IAA voiced a concern that if it was required to produce the documentation requested, that it would have a *"chilling effect"* on persons in the aviation industry reporting occurrences to the IAA in the future.

Mr Justice Meenan, in the High Court, referred to a previous decision made by him in relation to the disclosure of documents between Channel 4 and Ryanair. In that decision, he set out the requirement of a court to carry out a *"balancing test"* in deciding whether to direct the disclosure of documents given in confidence to an aviation authority. He noted that he also had regard in that decision to the "chilling effect" argument now raised by the IAA. Judge Meenan held that since he had concluded in his previous decision that the balance lay in favour of full disclosure, subject to certain redactions, it now followed that confidentiality was not an issue in this application.

Judge Meenan considered that two of the categories of documentation sought were relevant and necessary for the fair disposal of the case. Therefore, he ordered that the IAA disclose documents falling within those categories.

However, Judge Meenan noted that non-party discovery should only be required in circumstances where the documents in question are not readily available to be produced by a party to the case.

Having regard to this case, parties should be mindful that where they hold documents that may be relevant to a court case, they may be required to produce those documents even if they are not directly involved in the case. From the costs perspective, some comfort can be taken from the requirement on the party seeking discovery to indemnify the non-party in respect of all costs reasonably incurred.

Contributed by: Michelle Martin

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In Brief: Companies Act Changes

In this briefing, we take a look back over 2017 and give an overview of key changes made to the Companies Act, 2014. We also take a look forward to proposed changes in 2018.

Look Back:

1. Companies (Accounting) Act 2017

The Companies (Accounting) Act 2017 (the "Accounting Act") commenced on 9 June 2017. The main purpose of the Act was to transpose Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (the "Accounting Directive"). The aim of the Accounting Directive is to simplify and reduce the administrative burdens associated with the preparation of financial statements for enterprises, in particular SMEs. The Act also made a number of miscellaneous amendments to the Companies Act 2014 (the "Companies Act") not related to the transposition of the Accounting Directive.

Key changes under the Act include:

- Increase in the size thresholds for companies to qualify as "small" or "medium" and the introduction of a new "micro" category of company.
- Simplified regime for micro companies with regard to the preparation and filing of financial statements.
- Broader definition of 'designated ULC' such that more unlimited companies are obliged to file financial statements. The changes are intended to capture unlimited companies that have ultimate limited liability. Where a company is a "pure" unlimited company (i.e. there is no ultimate protection of limited liability in the group structure) it will still be possible to avail of an exemption from filing financial statements.
- Narrowing of the definition of 'credit institution'.

Read our full briefing on the Accounting Act here.

2. Companies (Amendment) Act 2017

The Companies (Amendment) Act 2017 (the "Amendment Act") commenced on 18 July 2017.

Changes under the Amendment Act are:

- New criterion to the definition of "relevant holding company", which is a company that is eligible to use US Generally Accepted Accounting Principles (GAAP). The new criterion is that the company must be incorporated in the State prior to the commencement of the Act.
- Extension of the use of GAAP by relevant holding companies from financial years ending at the latest on 31 December 2020, until financial years ending at the latest on 31 December 2030.

3. European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017

The European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) Regulations 2017 commenced on 21 August 2017 and apply for financial years after 1 August 2017. The Regulations transpose EU Directive 2014/95/EU and require

- some large companies to provide information on non-financial matters in their directors' report and,
- large listed companies to include in their corporate governance statement a report on their diversity policy with regard to their board of directors.

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Horizon scanning:

4. Companies (Statutory Audits) Bill 2017

The Companies (Statutory Audits) Bill 2017 (the " Bill") is currently making its way through the Dáil. The cumulative aim of the Bill is to further improve audit quality. The Bill will amend the Companies Act and insert a new Part 27 into the Act. The government's intention is to enact the Bill in early 2018. After enactment there will be one single body of legislation governing statutory audits in Ireland.

Proposed changes under the Bill include:

- Dispensing with the requirement for an audit committee for certain public interest entities.
- Applications to extend time for the filing of annual returns to be made before the High Court only.
- Giving the Irish Auditing & Accounting Supervisory Authority (IAASA) appropriate powers to ensure effective monitoring and enforcement of new requirements.
- Replacing the term 'public auditor' with 'statutory auditor'.

5. Central Register of Beneficial Ownership

Although the register of beneficial owners is an anti –money laundering rather than a company law creation, it is relevant as it applies to companies formed and registered under the Companies Act.

The Companies Registration Office (CRO) recently published a notice that a Statutory Instrument is expected in the coming months assigning responsibility to the Registrar of Companies for the establishment and maintenance of the central register of beneficial ownership of companies and industrial and provident societies (I&Ps). According to the CRO notice the register is expected to be in place and ready to be populated in early 2018. It is expected that there will be an extended time-frame for companies and I&Ps to file without being in breach of the statutory duty to file.

For further information please contact Barry Conway.

Contributed by: Gail Nohilly

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EIOPA Publishes First Report on the Use of Capital Add-ons under Solvency II

The European Insurance and Occupational Pensions Authority (EIOPA) has recently published a report which provides public information for the first time on the extent of the use of capital add-ons by national competent authorities (the "Report").

The Solvency II Directive 2009/138/EC ("Solvency II") permits the use of a capital add-on above the calculated Solvency Capital Requirement ("SCR") as a supervisory tool in exceptional circumstances, as more particularly described in Recital 27 of the Solvency II Directive:

The imposition of a capital add-on is exceptional in the sense that it should be used only as a measure of last resort, when other supervisory measures are ineffective or inappropriate.

Overview of Report

The Report shows that, as at 31 December 2016, capital add-ons had been imposed on twenty individual insurance undertakings (ten non-life, seven life and three reinsurers) and four insurance groups. The UK had the most active regulatory authority accounting for fifteen of the individual undertakings and all of the groups involved. Two of the undertakings were French and two were Norwegian. One undertaking was a life company regulated in Ireland, which was subject to an add-on of 50% of its SCR (the fifth-largest of the twenty-four add-ons documented in the report). No undertakings or groups are named in the Report.

The Report also shows that, out of the four permitted grounds for applying a capital add-on under Solvency II, the vast majority have been applied because the undertakings and groups involved had a risk profile that deviated significantly from the assumptions underlying the Standard Formula SCR. In two cases, capital add-ons were applied because of risk profiles that deviated significantly from the assumptions underlying an approved Internal Model SCR calculation. It follows therefore that as at 31 December 2016, no capital add-ons were applied as a result of systems of governance deviating from Solvency II requirements; or risk profile deviations following application of matching adjustment, volatility adjustment or transitional measures.

The size of the capital add-ons

The size of the capital add-ons applied vary considerably. In terms of percentage of calculated SCR, capital add-ons range from 2% up to 85%, with the largest percentage applying to a Norwegian non-life insurer. In monetary terms, two of the add-ons exceed €1 billion; three add-ons lie between €100m and €700m; and the remaining add-ons are less than €100m.

Observations

While the Report brings interesting information into the public domain, it cannot be regarded as a complete representation of the EEA-wide situation. This is because twenty-two of the thirty-one EEA Member States have exercised the option within Solvency II, to temporarily limit the public disclosure of capital add-on information (such information will be publicly available from all Member States by the end of 2020).Therefore, the data in the Report relates only to nine EEA Member States, and five of those had applied no capital add-ons as at 31 December 2016.

To view a copy of the Report click here.

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Record Fines for Insurance Company, Management and Contractors for Breach of UK Data Protection Laws

Following an inquiry by the Information Commissioner's Office (ICO), insurance firm Woodgate & Clark Ltd has been given a record fine for breaching the UK's Data Protection Act. The firm itself was fined £50,000 while a former director and senior employee were fined £75,000 and £30,000 respectively for their involvement.

The firm had hired two private detectives to illegally obtain the banking information of an insurance claimant whose nightclub had burned down, in order to determine if the claimant could afford to pursue a legal challenge against them. The private detectives used a 'blagging' technique to obtain the information which involved contacting the insurance claimant's bank and pretending they worked in a different department of the bank in order to trick employees of the bank into divulging personal information of the insurance claimant. The private detectives were able to obtain information in relation to the claimant's private personal accounts, loans and mortgages and this information was then passed on to the insurance company, who were aware it had been obtained illegally.

Commenting on the case Elizabeth Denham, the UK Information Commissioner, noted *"the illegal trade in personal information is not only a criminal offence but a serious erosion of the privacy rights of UK citizens. As well as these record fines, the organisations and individuals involved also face serious reputational damage as a result of being prosecuted by the ICO."* Additionally the judge, Charles Macdonald QC said that the offences involved were *"relatively serious"* and the motivations were plainly commercial.

This is the first prosecution of a company for 'blue chip hacking' by the ICO, but it is unlikely to be the last. The case follows on from an inquiry the ICO initiated in 2013 after 125 victims complained that the police failed to properly investigate their claims that they were subject to illegal data gathering tactics by 98 legal, insurance and financial companies throughout the UK. Accordingly the ICO has announced that in 2018 it will be focused on bringing claims against ten of such firms accused of similar 'blue chip hacking' tactics.

After the General Data Protection Regulation comes into effect on 25 May 2018 it is expected that higher fines for illegal data processing will increase considerably, as regulators such as the Irish Office of the Data Protection Commissioner and the ICO will be empowered to issue fines of up to €20 million or 4% of a company's annual global turnover. This means that companies need to be fully aware of their obligations under data protection law and ensure that all data processing activities are being conducted in line with their responsibilities and obligations under data protection law.

For further information, visit William Fry's dedicated website to the GDPR, **PrivacySource**, which includes in-depth analysis and practical tips on preparing for the GDPR.

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Training Racehorses Not Considered Agricultural Work by Labour Court

The Labour Court has dismissed the appeal of Ballydoyle Racing Stables against compliance notices issued by the Workplace Relations Commission in respect of employee working hours.

Background

A derogation exists under the provisions of the Organisation of Working Time Act (the "OWT Act") whereby employers who are engaged in the industry of "agriculture" are exempted from strict compliance with certain requirements of the OWT Act including employee breaks and daily and weekly rest periods.

Following a pre-announced inspection of Ballydoyle Racing Stables ("Ballydoyle") in May 2016, the Workplace Relations Commission ("WRC") issued four compliance notices requiring Ballydoyle to comply with certain provisions of the OWT Act governing working hours.

The compliance notice (in addition to the fixed payment notice) is one of two new legislative instruments introduced under the Workplace Relations Act 2015 (the "2015 Act").

Arguments

Ballydoyle appealed against the compliance notices served. It argued before the Labour Court that the employees, the subject of the compliance notices, fell within the exemption relating to agriculture set out in the OWT Act.

Ballydoyle contended that there was no requirement for it to comply with the provisions relating to employee breaks and rest periods as outlined. It said that the precise nature of Ballydoyle's business is that of agricultural activities. Ballydolye also explained that, due to ensuring continuity of production and the nature of its business, grooms and exercise riders often did not want to take set rest periods or breaks in respect of caring for horses, to the benefit of both riders and the animals.

Counsel on behalf of the WRC submitted that Ballydoyle fell outside the agricultural exemption and training racehorses could not be classified in this manner. The WRC emphasised the definition of agriculture under the Industrial Relations (Amendment) Act 2015, which refers to the production of animals or crops for consumption.

Labour Court Decision

The Labour Court rejected Ballydoyle's appeal and the compliance notices stand. In the Court's view the business falls outside various definitions of agriculture which it examined. In addition, it had not been clearly shown that the relevant employees were directly involved in ensuring continuity of production.

The outcome is noteworthy, not only because it is the first appeal against compliance notices issued under the 2015 Act, but also because of its potential impact on the bloodstock industry.

The official Labour Court decision will be released tomorrow. It is open to Ballydoyle to appeal the outcome to the Circuit Court.

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Should Controllers Refresh Existing Consent in light of GDPR?

Consent is one of six lawful bases to process personal data. For consent to be valid, it must be:

- freely given;
- specific;
- informed; *and*
- unambiguous in how it is provided by the relevant person.

Under GDPR, the Article 29 Working Party notes that when using consent as a basis to process personal data, the data subject should be offered control over what personal data are processed for what purposes. Also, the individual should be informed of the right to withdraw consent at any time. If there are multiple processing operations, the individual must be free which, if any, to choose. Should a data subject refuse to give consent to any processing activity, this must not result in any detriment to the data subject. At no times should a data subject feel compelled to give consent to a data controller. Data controllers must also be aware that consent cannot be validly obtained if hidden within terms and conditions, nor should it be bundled with or tied to other services or documents. If consent is given for a particular purpose, a data controller must always obtain fresh consent for any new purposes envisaged for such data if the data controller wishes to continue to rely on consent.

Controllers should keep records and evidence of any consent obtained and will be free to implement their own methods to comply with this. It is the explicit obligation of every controller to be able to prove that it has lawfully secured each data subject's consent. Evidence of consent obtained must be available for production as long as the processing of the data takes place. Once the processing has ended, details of the consent obtained should only be retained for as long as to comply with any legal obligations/claims.

The GDPR is set to overhaul existing compliance in relation to obtaining consent for data processing. In light of these new enhanced requirements, data controllers should be reviewing and assessing their current processes now in order to determine if they currently meet the standards that the GDPR requires.

The good news is that if current practices are in line with GDPR, then a refresh of all existing consents is not required. If current practices are not GDPR compliant, controllers will have to obtain updated consent and implement new GDPR compliant processes. In transitioning to GDPR ahead of the deadline, a controller may be able to validate existing processing currently based on consent by establishing a different legal basis under the GDPR for that data processing. Businesses should establish with legal advisors now that they have in place the correct legal basis for every processing activity because after 25 May 2018, it will be a difficult and expensive process, if possible at all, to switch from one legal basis to another.

For further information, visit William Fry's dedicated website to the GDPR, **PrivacySource**, which includes in-depth analysis and practical tips on preparing for the GDPR.

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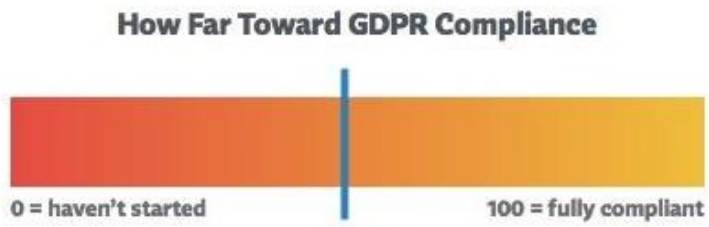
William Fry Data Protection Day Update 2018

2017 was the year of four letters – GDPR. It was the year in which the world of EU data protection law commanded attention and recognition from businesses worldwide. 2017 witnessed many businesses yielding to the mammoth task of "GDPR Readiness" in order to prepare for Europe's overhaul of its data protection regime. On International Data Protection Day 2018, we expect that the target for most businesses in 2018 is to meet the General Data Protection Regulation's (GDPR) deadline of 25 May 2018. Undoubtedly, 2018 will be a busy year for businesses. It is interesting to note that the majority of businesses will not be GDPR compliant by 25 May 2018. The International Association of Privacy Professionals has released the following statistic that only 41% of companies will be compliant by the enforcement date, while the rest aim to be compliant towards the end of 2018. For many, GDPR will be an ongoing task for the foreseeable future.



Aside from GDPR Readiness, 2017 also saw a significant increase in the number of global cyber-attacks. There were also calls for big data corporations to bear more responsibility. Of course, the ongoing debate around the validity of the European Commission's standard clauses for the transfer of data internationally continued. In 2018, all eyes will be on the Court of Justice of the European Union and its examination of the Irish Data Protection Commissioner's *"well-founded concerns"* over these standard clauses adopted by the European Commission.

Now in its eleventh year, International Data Protection Day is celebrated globally every 28 January to raise awareness and promote privacy and data protection best practices. To mark International Data Protection Day 2018, our Technology Team round-up some of the key data protection stories of 2017 and look ahead to what 2018 may bring in the data protection sphere.

The first quarter of 2018 should see most businesses finalising their GDPR Readiness programmes and ironing out any last minute gap areas. A critical action for businesses to take also will be to identify and implement robust security and technical measures to withstand the level of sophistication brought by last year's cyber-attacks.

Data protection, privacy and cybersecurity will continue to grab headlines in 2018. You can keep up to date with the latest insights on our website and follow us on Twitter @WFIDEA.

For further information on the incoming GDPR and detailed guidelines on GDPR Readiness, register for **PrivacySource**, William Fry's dedicated GDPR website.

Part 1: 2017 Round-Up

- Article 29 Working Party Guidelines: "Consent under the GDPR"; "Breach Response Plans"; "Transparency under the GDPR"; "Automated Decisions and Profiling"; "Administrative Fines Under the GDPR".
- Breaking Down the General Scheme of Data Protection Bill 2017: Part I; Part II;Part III; Part IV.
- Case Law: "Legitimate Interest Test"; "Right to be Forgotten"; "Challenge to Privacy Shield"; "Future of SCCs"; European Court Rules that Exam Scripts and Comments Constitute Personal Data

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Part 2: 2018 Forecast

- European Commission Issues Warning on Data Protection Ramifications of Brexit
- European Commission Proposes New ePrivacy Regulation
- GDPR – Likely Impact for Employers and How to Prepare
- Steps for the Insurance Sector to Take Now in Advance of GDPR
- GDPR for Irish Funds
- Digital Age of Consent for Children

Contributed by: David Cullen and Rachel Hayes

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The Patent Litigation Law Review: Ireland

William Fry has written the Irish chapter for the inaugural edition of 'The Patent Litigation Law Review'. A summary of the chapter appears below with their kind permission, please click here to view the chapter online or click here to download a pdf.

> *Historically, there has been relatively little patent litigation in Ireland, in particular litigation that progressed to full trial. However, in light of a significant growth in the pharmaceutical industry, with international pharma companies basing worldwide manufacture in Ireland, in recent years there has been a significant rise in patent litigation, particularly in pharma disputes, and Ireland is now recognised as an important jurisdiction in Europe.*
>
> *Read more….*

The Legal 500: Real Estate Comparative Guide – Ireland

The William Fry Real Estate team are proud to have written the chapter for Ireland in The Legal 500: Real Estate Comparative Guide. This chapter in the form of a Q&A provides an overview of Irish real estate law. It will be of particular interest to those new to Irish real estate law. It covers the most pertinent issues including ownership structures, restrictions, transfers, taxes and environmental contamination.

Click here to download the Irish chapter, or click here to view it online.

This Q&A is part of the global guide to Real Estate. For a full list of jurisdictional Q&As please click here - this guide is free to access.

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This publication is intended only as a general guide and not as a detailed legal analysis. It should not be used as a substitute for professional advice based on the facts of a particular case.

Data Protection Commissioner Issues Guidance on Meltdown and Spectre CPU Flaws

The Data Protection Commissioner (DPC) has issued guidance to data controllers following information that has now emerged regarding the discovery of the serious IT security vulnerabilities known by the names Meltdown and Spectre.

The DPC advises data controllers to check with their system manufacturers and providers, as well as their cloud service providers, regarding these vulnerabilities and to apply any security, hardware and software patches as soon as they become available. Controllers are also advised to ensure that their hardware firmware is up to date.

More generally, controllers are advised to ensure that they have regular, consistent and comprehensive patch management procedures in place. The DPC advises that *"it is good practice to install software/hardware patches within a test environment to ensure that these patches will function correctly within a live environment and do not cause further potential issues."*

The Meltdown and Spectre CPU flaws combined affect virtually all computers and other IT hardware including laptops, tablets and phones. The vulnerabilities appear to provide a means by which malicious software may be able to read otherwise protected memory on a computer system. This could be exploited by hackers to gain widespread access to data on the computer system, including sensitive data, passwords and encryption keys.

The flaws were reportedly first discovered in June 2017 but only made public in January 2018. One of the researchers who discovered the flaws described Meltdown in particular as being *"probably one of the worst CPU bugs ever found."* It is not known whether hackers have already exploited the flaws and it is understood to be very difficult to detect such intrusions.

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