

Transcript: 5 years of the GDPR – A spotlight on children’s data

Graham Doyle: Hello everyone and welcome to the Data Protection Commission podcast. I'm Graham Doyle, Deputy Commissioner and Head of Communications here at the DPC.

Today, the 25th of May 2023, marks the 5th anniversary of the implementation of the GDPR, or the General Data Protection Regulation. So much has happened over the past five years and today's podcast will focus on the DPC's work in the area of children's data protection rights. I'm delighted to be joined today by Jennifer Dolan, my colleague who heads up our children's policy here at the DPC, to discuss our work in this area, some of the highlights over the last five years and the road ahead for the DPC in the space.

So Jenny thanks a million for joining me and let's start maybe we can with a bit of background information when did we start actively focusing on children's data protection rights and what prompted it.

Jennifer Dolan: Hi Graham, thanks for having me, delighted to be here. So I suppose it all started in early 2018 in the months leading up to the implementation of the GDPR when we really first began exploring the area of children's data protection rights. The reason for this was because the GDPR was the very first EU data protection law to devote special attention to the protection of personal data of children and the position of children as data subjects. Up until this point there was absolutely no mention of children and their rights in any previous data protection law. The GDPR was really novel in this sense and all of a sudden children were at the fore of the data protection landscape. But because the GDPR is a principles based law, questions inevitably began cropping up about how a number of these provisions should be interpreted and actually implemented in practice. So for example, in what circumstances can a child exercise their own rights or how exactly should transparency information be given to a child. It became quite clear to us very quickly there was gonna be a real need for substantial guidance in this space. As a result of that the Children's Policy Unit was established in 2018, as part of our obligation under the GDPR to promote awareness and understanding of the specific standards required for the protection of children's personal data and the rights of children as data subjects.

Graham Doyle: When we talk about awareness and understanding Jenny what was our first steps in promoting this awareness and understanding?

Jennifer Dolan: Our first step was deciding to create a really detailed research based piece of guidance on the issues affecting children, which should be used by organizations as essentially a road map for their processing activities. So, what we decided to do was run a public consultation to gather the views of all the stakeholders. But most importantly we wanted to give children and young people a voice in this process, because they do have a right under UN Convention which state a child to have the right to have their voices heard on matters that affect them. What we decided to do was divide our consultation into two different streams. Stream 1 was your more traditional consultation. We launched it in December 2018 and it was targeted at adult stakeholders, industry, parents, educators, right up to children's rights organisations. We invited them to submit their responses on an array of different questions that we had set out on a document. Then we launched stream 2 on International Data Protection Day in 2019 and that sought to involve children and young people directly in the classroom through a specially designed Lesson plan and consultation process. This was aimed at children aged 8 and up. We created and designed a pack of Lesson plan materials and we reached out to every single primary and post primary school in Ireland, as well as all Youth Reach Centers. We invited them to take part in this consultation and our Lesson plan had a really strong emphasis on social media and we wanted to make sure that these materials really resonated with young people and actually reflected their reality, rather than just talking about data protection in this abstract context. It was based around a fictitious app that we actually created for educational purposes called Squad Share. This was an app for sharing photos and videos with your friends, chatting with them, all that kind of stuff. Through learning about Squad Share in this context and children were introduced to protection issues and then informed of their rights under the GDPR. In this way we actually got to demo these lesson plans with the support of the ombudsman for children's office and we carried out a series of pilot workshops in in October 2018. We were just so lucky to work with some really brilliant young people from three different schools across three different age groups. It was really important that we had that spread. We met with lovely children from 4th class primary school, second year secondary students and transition year students. It was just a really fantastic experience and I have to say for me personally it was one of the

highlights in terms of the work that we've done in the area of children's issues over the last five years. I'd strongly recommend to any departments or organizations, even in the private sector, if you're designing projects relating to children's issues involve children in the decision making processes. It's was just such an eye opener for me, in terms of the level of understanding and insight that these kids had. We gathered some absolutely valuable feedback from this three day pilot program. They had really great ideas and we're just so creative and innovative.

Graham Doyle: I actually remember the time myself Jenny, because we had some fun at home and in my own house because my son and his teacher was actually doing some of the work from the lesson plans that had been sent out. Then she gave some homework and they were to go off and ask their parents questions about data protection and the GDPR. So my son thought that this was the greatest thing ever to be able to quiz me on data protection. I'm not gonna tell you what the answers were, please don't ask him. He got it right, I got it wrong. I suppose in terms of the findings in the feedback and the engagement we had with the students, can you remember any particularly good suggestions or insights that children had?

Jennifer Dolan: Well we've an entire report published that covers all of the really wonderful, insightful feedback that we received from the 50 different submissions we got from different schools. I definitely encourage our listeners have read of that. Of course a couple stuck with me, for example, we asked children did they think that companies should be allowed to use their personal data to show them ads. One third class child said no and because think of the difference between TV ads and this type of ad. These ads are literally so scary because they're pointed at me and they're not pointed at everyone like a TV ad is. I just thought this is so on the money. I couldn't believe an 8 year old was actually aware of targeted advertising, it was it was amazing. Another fifth class student said they also didn't think a company should be able to use their personal data for ads because it was so creepy. Actually, that was a term we heard a lot in in the various submissions. But at the same time this child said they wouldn't pay to join these sites. Here we have a child talking about monetizing personal data, a really complex topic that most adults grapple with, so it was just incredible. I just don't think we give kids enough credit at all.

Graham Doyle: What do you do with the feedback that you received?

Jennifer Dolan: We summarized all of this feedback from both streams, the adult stream and the children's stream, and we actually published 2 reports. Those were published in draft form at the end of 2020 and then we put that draft into public consultation, to give stakeholders a final chance to have their say on the standards that we were proposing. The feedback from that consultation was also published in a report, along with the DPC's feedback to various comments and concerns. I think that was important as well that the DPC state their reasons for certain positions. Once everything was ironed out, the final version of the fundamentals was published at the end of 2021. This marked a real milestone I think for the DPC because it was the culmination of our intensive work in this area over three years. It involved three separate stakeholder consultation processes, engagement with experts in the area of children's rights, expansive research and a two stage drafting process. We're really determined at the DPC to drive transformation and how children's personal data is handled and I think the fundamentals represent a really important stepping stone in in in this evolution.

Graham Doyle: Jenny, can you tell us a bit about the fundamentals and the kind of standards that organizations now have to apply?

Jennifer Dolan: Firstly the fundamentals apply to any organization processing children's personal data. Whether it's in the online world or offline and they apply to services that are directed a, intended for, or likely to be accessed by children. I think that's a really important distinction because we find that a lot of organizations are simply stating on their website, or within their apps, that their service isn't for children or it isn't for children below a certain age. The reality is that a huge number of children are in fact using their service and you know nine times out of 10 they're perfectly aware of this. So, the impact then of this is that a huge cohort of child users aren't getting the protection that they deserve. Using the fundamentals, organizations won't be able to hide behind their intended audiences. They'll have to go that extra mile in terms of protecting the children who are in reality using their service. I think another important point about the fundamentals is that they're anchored on the principle of the best interests of the child and this is a principle that derives from international law namely from the UN Convention on the Rights of the Child. It essentially means

that the best interests of the child should be a primary consideration in all decisions relating to the processing of children's personal data. The focus on this principle is evident throughout the fundamentals, 14 different child specific data protection interpretive principles that organizations should comply with when they're processing children's personal data. Obviously we don't have time to go through all of them but by way of example we state that organizations should provide a floor of protection for all users, unless they take a risk based approach to verifying the age of their users. This basically means if an organization isn't sure if children are among their users, then they need to implement a higher start on the level of data protection across the board for all their users, including adults. This is to ensure that they're protecting the rights of their child users. Another fundamental we have is let children have their say. That basically means that organizations shouldn't forget that children are data subjects in their own rights and they have rights in relation to their own personal data at any age. I think that's the key point here, at any age, it doesn't matter. Essentially they should be able to exercise the right at any time as long as they have the capacity to do so and as long as it's in their best interests. I know from experience when I'm out and about speaking at events or engaging with organizations data protection officers they always find that the practical tips and best practices that we publish in our guidance really useful.

I actually think there's a really good blend of theory and practical guidance in the fundamentals and we've got a number of, non-exhaustive, lists of best practices and suggested criteria and recommended measures, dotted all the way throughout the guidance. So for example we have a list of suggested measures that controllers could use to convey transparency information to children. We have a list of factors that they can take into account when they're trying to assess if a child should be capable of exercising their own data protection rights. We also set out a variety of recommended data protection by design and default measures that will definitely enhance the level of protection afforded to children.

Graham Doyle: There's definitely plenty of practical advice in there for organizations alongside the theory you spoke earlier about the importance of involving children in the process and hearing what they have to say about the data protection rights. You're blown away, I think, with some of the some of the feedback that we received. Are we looking at providing guidance for children themselves as well?

Jennifer Dolan: This is something we've been always incredibly keen to do because you know ultimately while it's important that controllers have a road map for compliance, it's equally as important that children themselves are well versed in their own data protection rights. It's maybe more importantly that they're aware of the risks involved in sharing their personal data. I think protecting children's personal data also means giving them the knowledge and the tools they that they need to stay safe when they go online. It's not just about keeping them away from it. Last year we published 3 short guides for children on data protection and their rights under the GDPR. The purpose of these guides was really to explain in language that children can easily understand what data protection is, why it's important, what their protection rights are and how they can use them, as well as giving them practical tips and advice on how to keep their personal data safe in a digital environment. So they're mainly intended for children aged 13 and over but we're also considering the best avenue for addressing a younger cohort of children. So watch this space for that.

We just published a suite of guidance materials for parents on their children's data protection rights as well. I think it's actually really important that both sides of this relationship are being formed because kids are living more and more of their lives online these days. We wanted to support parents in helping them to understand their children's data protection rights. These guides look at you know your child's data protection rights the issue of children's data and parental consent, how to help protect your child's data and whether there's any limits on your child's data protection rights. It really covers a whole range of topics. Aside from that kind of traditional written guidance we also recorded a series of 80 posts on children's data protection issues for the ISPC's digital hub. This covered loads of different topics including targeted advertising, profiling, data protection and social media platforms. There really is an awful lot of helpful information up there as well this guidance.

Graham Doyle: Jenny, as we know the feedback we get and from various stakeholders is that they want more and more guidance. But a lot of people out there as we know say that enforcement is equally important and they want to see more and more enforcement. Maybe can you talk just a little bit about the enforcement that we've done over the last few years and the enforcement going forward, in the area of children?

Jennifer Dolan: In 2022 we concluded our first large scale inquiry that dealt with the processing of children's personal data. This inquiry concerned the processing of data relating to child users of the Instagram social networking service and this was initiated by the DPC in September 2020. Firstly in response to information that was provided to us by a U.S. data scientist, but also in connection with issues that we had identified ourselves after examining the Instagram user registration process. Essentially the inquiry examined the public disclosure of e-mail addresses and or phone numbers of children who were using Instagram business account. Instagram had allowed child users between the ages of 13 and 17 to operate business accounts on the Instagram platform and at certain times operating accounts like this required or facilitated the publication of that build users phone number and sometimes their e-mail address to the world at large. Now because this was a cross-border inquiry and it impacted not only Irish users but also users all across EU this meant that the DPC was required under article 60 of the GDPR to submit its draft decision to all peer regulators in the EU, known as concerned supervisory authorities or CSA for short. This decision was ultimately referred to the European Data Protection Board under article 65 of the GDPR. This was because the DPC was unable to reach consensus on some of the objections that have been raised by these CSA's to the DPC's draft decision. Without going into the nuts and bolts of all of that, the DPC adopted its binding decision in July 2022. The DPC's inquiry then concluded in September 2022 and we imposed a fine of 405 million on Meta Platforms Ireland Limited, as Instagram's parenting company. We also imposed a range of corrective measures.

Graham Doyle: Jenny during the course of that inquiry Instagram themselves made changes to the platform and the platform is a safer platform. I think that's important to know and it's really encouraging. We have a second query that I know has just in recent weeks gone to article 65. In relation to TikTok. This has gone before the European Data Protection Board?

Jennifer Dolan: We did launch another inquiry and it was in 2021. It's examining TikTok's compliance with the GDPR, data protection by design and default requirements as they relate to the processing of personal data in the context of platform settings for child users and age verification measures for children under 13. This inquiry is also examining whether TikTok has complied with the

GDPR's transparency obligations in the context of the processing of children's personal data. It's currently ongoing so there's not much more we can say about that. These two large scale inquiries are a very important step in the DPC's work in the area of children. They're very reflective of the real significance that we're placing on these issues.

Graham Doyle: So Jenny in terms of any final thoughts, what are next steps and how do you think the future protecting children's data is shaping up? where are we going from here?

Jennifer Dolan: I think children's policy is absolutely gonna continue to be an area of focus for the DPC, this is reflected in our 2022 to 2027 regulatory strategy which we published at the end of 2021. It lists the protection of children and vulnerable groups as a key policy priority so we'll absolutely be focusing on this in the future. In terms of next steps, well the fundamentals form the basis for the DPC's approach to supervision, regulation and enforcement in this area. So we're currently focused on identifying the best way is to drive engagement with the fundamentals. We're also heavily involved in drafting a really substantial guidance document at European Data Protection Board level. This is a paper on children and data protection so we're really delighted to be involved in such an important piece of work that is seeking to harmonize the approach that's going to be taken at an EU level to this really critical area. That's a big piece of work to keep an eye out for. To answer to your second question, I have to say I think that the future of children's data is bright .Overall we've witnessed some really positive developments over the last five years in this area, not just at home, across the globe as well. I do think it's high time because the needs and rights of children have been overlooked for far too long in the online world particularly. It also goes without saying that we're far from done because a lot more to do but DPC's really leading the way in terms of setting the standards for the protection of children's data. It's a very exciting time to be to be working in this sphere.

Graham Doyle: Jenny, thanks for joining me today on what is the 5th birthday of GDPR. I hope the listeners found this useful and informative. This has been a great sum up of five years of the GDPR in terms of children. As Jenny said earlier, the fundamentals documents we've produced is on our website, which is www.dataprotection.ie.

Jenny, all that's left to say is thanks very much.

