

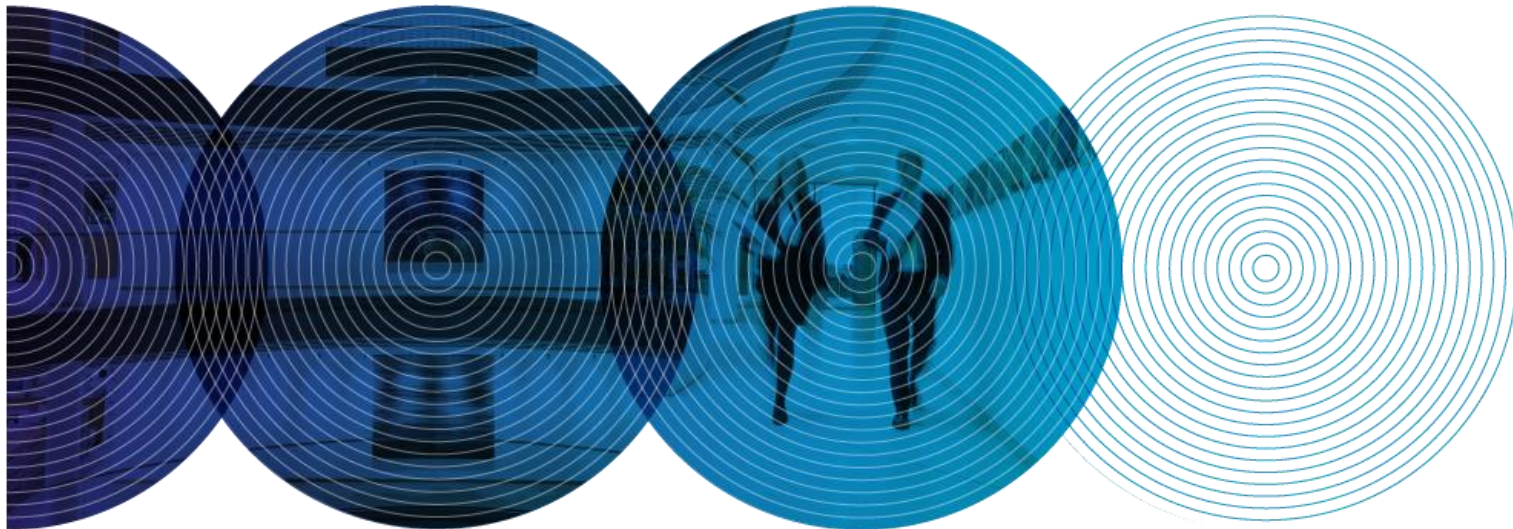
---

# Privacy Laws & Business Legitimate Interests Assessments

Adam Finlay

Thursday 9 May 2019

MCCANN FITZGERALD



---

# Legitimate Interests Assessments

A scalable method for carrying out a LIA

1. Describe the scope
2. Legitimate Interest?
3. Necessary?
4. Overridden by interests or rights and freedoms?
5. Any further mitigating steps?
6. Further balancing assessment
7. Keep under review

---

# Legal Framework

- Articles 6(1)(f) and 5(2) (accountability)
  - Also 13 and 14 (notices) and 21 (right to object)
- Recitals 47 to 49
- Art.29 DP Working Party Opinion 06/2014
  
- ICO Guidance
- EDPB Opinion 05/2019

# Legal Framework - GDPR

- Article 6(1)(f)
  - *processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.*
  - *Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.*

# Legal Framework - GDPR

- Recitals 47 to 49
  - ... the existence of a legitimate interest would need **careful assessment** including whether a data subject can **reasonably expect** at the time and in the context of the collection of the personal data that processing for that purpose may take place ...
  - legitimate interest could exist for example where the **data subject is a client or in the service of the controller**
  - processing of personal data strictly necessary for the purposes of **preventing fraud** also constitutes a legitimate interest
  - processing of personal data for **direct marketing** purposes may be regarded as carried out for a legitimate interest
  - controllers that are part of a group ... may have a legitimate interest in transmitting personal data within the group for **internal administrative purposes**
  - processing of personal data to the extent strictly necessary and proportionate for the purposes of ensuring **network and information security**

---

# Legal Framework - Guidance

- Art.29 DP Working Party Opinion 06/2014
  - *(has not been endorsed or updated by EDPB yet)*
- ICO Guidance
- EDPB Opinion 05/2019
  - *Where [articles of the ePrivacy Directive] require consent for the specific actions they describe, the controller cannot rely on the full range of possible lawful grounds provided by article 6 of the GDPR*
  - *the more specific provisions of the ePrivacy Directive must take precedence over the more general provisions of the GDPR*

---

# Legitimate Interest?

- What is the interest pursued?
- Is the interest clearly articulated?
- Is this interest lawful?
- Is it a real and present interest?
- Does the GDPR (or guidance) explicitly recognise this as a legitimate interest?
- Is this a legitimate interest?

---

# Necessary?

- Is it necessary to process personal data for the purposes of these legitimate interests?
- Could these legitimate interests be achieved without processing personal data, or in a less intrusive way?



---

# Initial Balancing Assessment

- Is there an impact on the interests or rights and freedoms of data subjects?
- If there is any negative impact, how material is it?
  - Reasonable expectation?
  - Informed of legitimate interests?
  - Right to object?
  - Special categories of data?
  - Children or other vulnerable data subjects?
  - etc.
- Should the legitimate interests be overridden?

---

# Mitigating Steps

- Transparency – updates to notices?
- Opt-outs (right to object)
- Enhanced compliance with other obligations?

# Examples

Valid	Invalid
Non-invasive direct marketing (where consent is not required)	Invasive profiling-based direct marketing
Internal investigation of employee misconduct / grievance / dispute	Invasive and excessive employee monitoring
Whistleblowing scheme to comply with foreign legal obligations	Informal internal whistleblowing scheme

---

# Legitimate Interests Assessments

A scalable method for carrying out a LIA

1. Describe the scope
2. Legitimate Interest?
3. Necessary?
4. Overridden by interests or rights and freedoms?
5. Any further mitigating steps?
6. Further balancing assessment
7. Keep under review

---

**Principal Office**

Riverside One, Sir John Rogerson's Quay  
Dublin 2 D02 X576  
+353 1 829 0000

**London**

Tower 42, Level 38C, 25 Old Broad Street  
London EC2N 1HQ  
+44 20 7621 1000

---

**New York**

Tower 45, 120 West 45th Street, 19th Floor  
New York, NY 10036  
+1 646 952 6001

**Brussels**

40 Square de Meeûs, 1000 Brussels  
+32 2 740 0370