

Risk Management Newsletter

Cybercrime, GDPR fines and DPO's

It has been an eventful few months since our last newsletter in April. GDPR is now live, so we look at some questions around insurability of fines and penalties as well as cover for your Data Protection Officer.

But first up, Cyber crime losses continue to stack up among our client base, and the sums involved are huge.

Cyber Crime on the rise

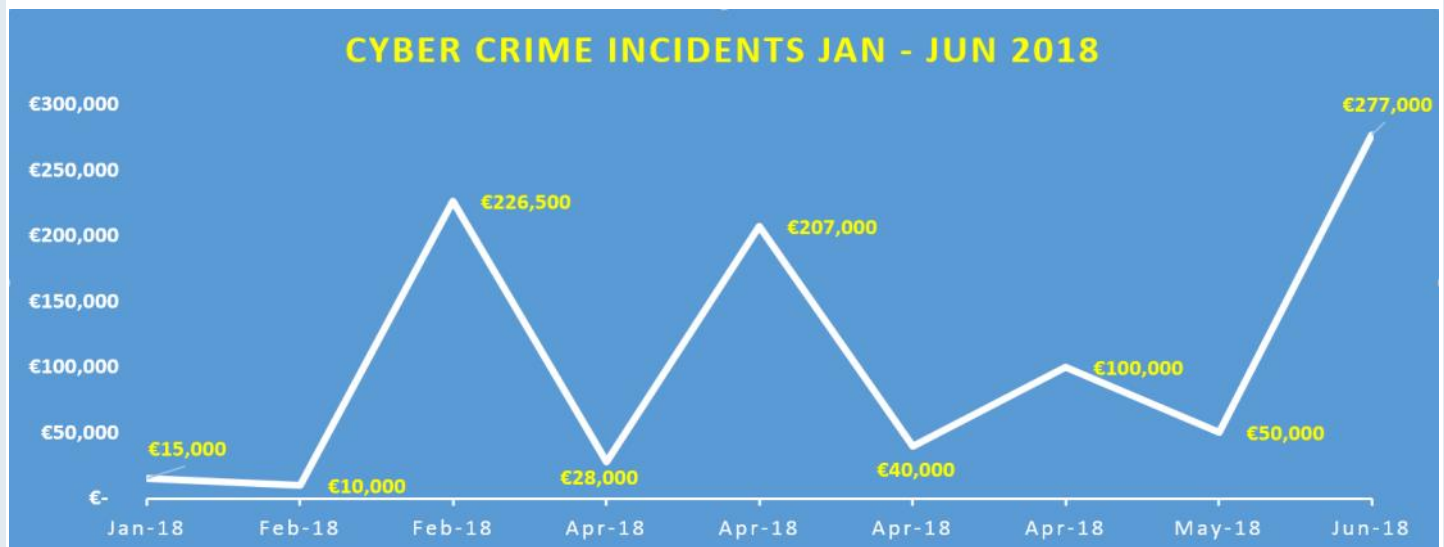
Every month or so another report is launched telling us that Cyber crime is on the rise. However, quite often those surveyed consist of large multinationals or foreign companies; Irish businesses can struggle to relate to these.

However, no-one should be in any doubt that cyber crime is very much an active threat to anyone that transfers money to third parties in Ireland just as much as elsewhere, and is on the increase.

	2015	2016	2017	2018 (to date)
Average loss to Cyber Crime	€18,800	€45,100	€40,400	€100,500

Source: Figures as compiled based on correspondence with our client base

See below actual cyber crime losses that have affected our clients thus far this year. The numbers involved are sobering.



In 2018 we have seen incidents affect a number of different industries, including construction, hospitality, legal, not-for-profits, marketing, outsourced customer services, and transport.

Most Cyber Insurance policies do not include Cyber Crime cover. We have a product which offers comprehensive cover against these losses. Our contact details are on the last page.

O'Leary Insurances Ltd. is regulated by the Central Bank of Ireland. O'Leary Insurances (Dublin) Ltd. is regulated by the Central Bank of Ireland. O'Leary Insurances (Galway) Ltd. is regulated by the Central Bank of Ireland. O'Leary Insurances (Waterford) Ltd. is regulated by the Central Bank of Ireland.

GDPR - insurability of fines and penalties

Most clients want to know what cover is available under a Cyber Insurance policy against GDPR fines and penalties.



The potential fines under GDPR are intimidating. There is debate amongst insurers and legal experts as to whether a fine by the likes of the Data Protection Commissioner, or their equivalent in another country where GDPR is in effect, would be considered criminal or punitive in nature.

The legal view

From an Irish perspective, the indications from the Data Protection Commissioner are that fines will indeed be partially or wholly punitive. If that is the case, then it is unlikely that an insurer can legally pay a claim, as it would be deemed to go against public policy. For companies that hold / process the personal data of individuals in other EU countries, the situation will vary.

What do the insurers say?

However, insurers are adamant that they will pay fines where they can, and their policy wordings are very clear on this. See below an excerpt from a recent blog by an influential Cyber Insurer:

“Are fines under the GDPR insurable?”

Probably – at least until a court with relevant jurisdiction rules otherwise. There is nothing within the regulations themselves expressly preventing insurance against the proposed fines. Equally, the Information Commissioner’s Office (who will be enforcing the regulation in the UK) has said nothing about them being uninsurable either. In order for a fine to be deemed legally uninsurable, it would need to be mandated as such by a court of law, which means an individual or entity would need to legally contest the ability of an insurer to pay it. As a result, insurers will have the ability to pay GDPR fines and penalties until a court order states otherwise. The same goes for third party liability actions.” [\(link here\)](#)

Suffice to say, coverage around GDPR is as comprehensive as insurers can legally allow, and in the absence of a legal precedent in each jurisdiction, no-one knows for certain whether the fines will be criminal, punitive, or neither.

We will of course keep you updated when this is tested with an actual claim.

As usual we include some examples of cyber losses on the last page of this newsletter



Data Protection Officers

Are Data Protection Officers covered by commercial insurance? Well, it depends....

Data Protection Officers (DPO's) have the benefit of good job security - under article 38(3) of GDPR they "shall not be dismissed or penalised by the controller or the processor for performing (their) tasks".

However, they may also be held personally liable for offences under data protection regulations. This has resulted in a number of our clients asking whether they are covered by company insurances.



In this piece we consider two types of DPO:

- 1) A director / employee of the company acting as DPO
- 2) The company outsourcing the role of DPO

Directors & Officers (D&O) Insurance indemnifies directors against claims arising from stakeholders; this could include anyone from competitors to regulators.

One of the key benefits of D&O Insurance is that it acts as the first port of call for insured losses - thereby potentially protecting the personal assets of individual directors which could otherwise be at risk.

DPO's assume significant obligations under GDPR; it is only natural that they want to know if they are covered by a company's D&O insurances.

A general guide is that a director / employee of the company acting as DPO would be considered either a director or officer of that company, and therefore should be covered by D&O insurance. Outsourced DPO's would not expect to be covered by this policy - they should at a minimum carry **Professional Indemnity Insurance** as they are carrying out a professional service for third parties.

Finally, as insurers develop their offerings some **Cyber Insurance policies** are starting to include elements of D&O cover - and vice versa with D&O policies including some Cyber Insurance covers.

Again, most such policies will recognise DPO's if they are working for the company as an employee. For companies that have outsourced the role of DPO, these would not generally be covered by a Cyber Insurance policy.

Advice provided in this newsletter is intended as a general guide and is brief by nature.
For queries specific to your own insurances, please contact us to discuss.



Risk Management Newsletter

Thank you for reading our newsletter. Below are links to our own social media pages. Follow these to keep abreast of important updates.

LinkedIn: <https://goo.gl/u06ncG>

Twitter: @OLearyInsurance

Facebook: <https://goo.gl/DILziV>

Below are a selection of cyber incidents that we have come across recently. As usual, these are all real-life Irish cases.

Industrial accident - privacy breach

A company's employee suffered a very serious workplace accident which was caught on CCTV. An employee obtained footage of the incident and showed it to other employees and third parties. A solicitors letter was sent to the employer stating that the CCTV should not have been passed on to third parties.

CEO Fraud

A companies email server was hacked and the criminals sent emails to the Financial Controller purporting to be one of the directors and asking them to pay particular attached fraudulent invoices. These were paid in full for a six-figure amount.

Services firm - employee fraud

The family of an employee highlighted that the individual in question had taken credit card details of customers and used them to purchase goods. The firm in question had to make a notification of this to the Data Protection Commissioner and to make necessary changes company-wide to prevent it happening again.

If you wish to discuss further please contact us.

For new clients please contact cyber@oli.ie - we have 8 offices around Ireland to respond to your needs.

Office	Contact	Phone	Email
Cork	Brian O'Mara	021 453 6860	bomara@oli.ie
Dublin	Robert O'Leary	01 663 0618	roleary@olid.ie
Galway	Angela Rossborough	091 778 677	arossborough@olg.ie
Waterford	Laura Elliot	051 309 130	lelliott@oliw.ie

About O'Leary Insurances

Insurance Brokers & Consultants, Est. 1961

From an initial complement of three staff in 1961, originally founded by Archie O'Leary, O'Leary Insurances has successfully grown & developed into an Insurance Brokerage which specialises in providing a high level of customer service throughout Ireland.

With over two hundred employees now operating from eight locations nationwide, O'Leary Insurances provides a comprehensive insurance broking service to all sectors of the Irish Economy. As part of this insurance broker service, we have consistently maintained our strong emphasis on professionalism and personal attention through all of our products, building on our hard-earned reputation for dependability and commitment.

Our highly trained and experienced personnel would be delighted to be of service to you and would welcome the opportunity to discuss both your [Personal Insurance](#) and [Business Insurance](#) requirements with you. We are confident that our knowledge and expertise can assist you in the management of your insurance needs and can assure you of our very best attention in meeting the challenges of the future.

Disclaimer – as insurance brokers we cannot provide legal advice.

Thank you for reading.

