

New UK Regulator Says Yahoo Breach Probe Just A Start

By Allison Grande

Law360, New York (September 30, 2016, 10:56 PM EDT) -- The newly instituted U.K. data protection regulator said Thursday that her office was probing both the massive Yahoo breach and WhatsApp's new data-sharing arrangement with its parent company Facebook, vowing to make these kinds of big tech-focused actions a cornerstone of her five-year tenure.

In her first speech since taking over the post of U.K. Information Commissioner in July, Elizabeth Denham announced her intention to place a significant focus on the goal of boosting consumers' confidence in businesses' ability to safely handle their data.

"At the end of my five-year term, my wish is that we are at a place where citizens and consumers have much more confidence in organizations' use of personal data," Denham said.

To help achieve this objective, Denham said that her office would place an emphasis on the principles of consumer control, transparency and fairness in its enforcement, advisory, education and investigatory work.

"We'll be choosing our investigations carefully, making sure they are relevant to the public — the results of which can cascade across a sector," Denham said, adding that while the office wouldn't need to bring enforcement actions "in an ideal world," the regulator "will use the stick in the cupboard when necessary."

She said one industry that will draw scrutiny is the tech sector.

Last week, the Information Commissioner's Office stepped in to "ask questions" about the cyberattack that Yahoo disclosed last week that compromised account data tied to at least 500 million users worldwide and impacted 8 million U.K. accounts. It is also "currently reviewing" WhatsApp's plan to share account data with Facebook, a policy shift that has already drawn criticism from both U.S. privacy groups as well as a German privacy regulator.

"No regulator has enough resources for all audits and systemic investigations. The office has to look at investigations that have the largest impact on the privacy rights of individuals," Denham said Thursday. "As technology is reaching critical mass and the sophisticated uses for data increase, the ICO will undoubtedly be delving deeper into the workings of your sector."

The commissioner — who came to the U.K. from Canada, where she had been British Columbia's information and privacy commissioner since 2010 — also signaled her intention to ramp up her office's capacity for technology "by analyzing more,

researching more, and embedding technology" into the commission and partnering more with universities to support research into privacy-by-design initiatives.

In order to help facilitate this tech infusion, Denham said that she is planning to create a new position of chief technology adviser and hire new talent for the office's tech team.

"We are identifying new policy priorities which promote a responsible approach, ultimately leading to greater trust in businesses and in public bodies," she said.

Aside from changes within the office, Denham also called on the businesses to do their part to build privacy programs that abide by the law and help to foster consumer trust.

"We don't just need you to tag along. We need you and your companies to lead the way," Denham said. "We want to hold companies up as great examples of how privacy and technology can work for consumers."

According to Denham, one way to achieve this objective is for companies to "to make sure [they're] following the law as it stands."

Companies' data handling practices in the EU are currently governed by a data protection directive, but in May 2018 that framework will be replaced with a more uniform and stringent regulation that will tighten restrictions on the use and flow of data while empowering national privacy regulators to levy fines of up to 4 percent of a company's annual global revenue.

While questions have swirled about to what extent the U.K. will be swept up by this overhaul in the wake of its voting to leave the EU earlier this year, Denham said in her speech Thursday that while the referendum vote "has thrown our data protection plans into a state of flux," companies would be well-advised to get into compliance with the general data protection regulation, given that it will likely take effect before the U.K.'s exit and businesses will need to adhere to it to do business in the rest of bloc.

"The digital world is a smaller world. Copenhagen consumers are closer, Sofia's citizens aren't so far away," Denham said. "For most people in this room, the GDPR will be something you'll have to follow, to do business where you want to."

Denham added that she will push for whatever law is put in place after the U.K.'s exit to be consistent with the general data protection regulation in order to deliver certainty to businesses and avoid problems with moving data through Europe that stem from being deemed inadequate by the EU.

"Regulators generally don't lobby, and ultimately we work with the law government give us," Denham said. "But when the conversation is about the future of data protection in the UK, the ICO is determined to be part of that conversation."