

# Regulatory Committee minutes

4 December 2023

Details of attendees are provided at the end of the minutes.

## 1. Introductions and apologies

- 1.1. Apologies for absence were received from Emily Keaney, Melissa Mathieson and Stephen Bonner. Tony Luhman was welcomed to the meeting to provide insight from Regulatory Supervision in Stephen Bonner's absence.

## 2. Declarations of interests

- 2.1. No declarations of interests were made.

## 3. Matters arising from the previous meeting

### **Minutes**

- 3.1. The minutes of the previous meeting had been approved as a correct record.

### **Actions**

- 3.2. The Committee was informed that the Children's Strategy update would now come to the Committee's March meeting, due to the absences of Stephen Bonner and Emily Keaney from this meeting.

## 4. Regulatory Risk project update

- 4.1. Paul Arnold provided an oral update on progress with the regulatory risk review project, following the conclusion of PA Consulting's review and report.
- 4.2. While PA Consulting's review had been focused on data protection investigations, the intention was to seek to implement the findings (so far as possible) across all regulatory activities, through a framework of different regulatory interventions that could be used for different situations. This would broadly be divided into three tiers, from a complex tier of a small number of significant reviews requiring multifunctional teams, to a foundational tier of high volume activity.
- 4.3. The highest level of risk was in relation to investigatory activity, and therefore this would be the focus for the first stage of

implementation, with the aim being that the framework was implemented by around April 2024.

**ACTION: Paul Arnold to provide the Regulatory Committee with the reports and paperwork to be used to brief staff regarding the Regulatory Risk Review project. Due date: 22/12/23**

- 4.4. The Committee discussed the importance of monitoring in the success of this work, both in terms of understanding the overall economic situation at any time and of understanding the effectiveness of regulatory interventions. The Committee commented that monitoring the effectiveness of regulatory interventions would be challenging, but was vital to allow evidence-based decisions to be taken on the types of regulatory interventions to be used in each situation.
- 4.5. The Committee also discussed the importance of prioritisation of activities and prioritising prevention of harm to individuals above all, as well as identifying the problem that interventions were seeking to resolve. The Committee also discussed differentiating approaches between organisations which were attempting to comply with the law and those which were seeking to circumvent it.
- 4.6. The Committee welcomed the recent communications about the investigation into tracing agents and commented on the benefits of communicating about investigations like this which did not find breaches of data protection law and thus gave assurance to the public.

## 5. [Current and emerging high profile regulatory activity](#)

### **Supervision activity**

- 5.1. Tony Luhman provided an oral update on recent key supervision activity, including the recently completed investigation into “text pests” (including the good practice by some large organisations in this space), an ongoing investigation into use of unencrypted removal storage devices, and an upcoming investigation into data breaches caused by Excel spreadsheets being published to respond to Freedom of Information requests.

### **Policy outputs**

- 5.2. Due to the apologies for absence from Emily Keaney and Melissa Mathieson, it was not possible to provide an update on recent

significant policy outputs. The Committee requested that a brief update be provided by email once Emily or Melissa had returned to work.

**ACTION: Emily Keaney and Melissa Mathieson to provide a brief written update on key policy outputs over the last quarter. Due date: 22/12/23**

### **Litigation**

- 5.3. Claudia Berg provided an oral update on recent litigation activity, including the cases in relation to TikTok, Doorstep Dispensaree, Clearview and Montague v ICO and Department for International Trade.

## **6. Public sector enforcement approach – evaluation after one year of new approach**

- 6.1. Amanda Williams and Tom Reynolds joined the meeting to present a report giving the Committee oversight on the emerging outcomes on the approach to public sector enforcement.
- 6.2. The Committee welcomed the update and discussed the importance of identifying champions within the public sector, in areas of significant influence, to promote the importance of data protection in the public sector and the impact of regulatory interventions. The Committee particularly welcomed the approach of increased upstream engagement with the public sector, rather than interventions primarily being through enforcement.
- 6.3. The Committee also commented on the importance of ensuring that regulatory interventions, regardless of whether they included a monetary penalty or not, led to discussion and action at leadership levels in organisations.
- 6.4. The Committee also discussed the importance of prioritising engagement with Government departments which were heavy users of data.
- 6.5. The Committee also discussed the importance of data collection to measure the impact of the approach, including the importance of a strong baseline position at the start of the approach. The Committee commented that it may be challenging to gather direct evidence of the impact of the new approach, but suggested that there may be strong proxy measures, such as increases in Government departments engaging with the ICO at early stages. The Committee also suggested that it may be beneficial to develop

league tables of data protection compliance across Government departments, notwithstanding the potential challenges in comparing departments with significant differences in the amount of data they used.

## 7. [Regulatory Committee work programme](#)

- 7.1. Chris Braithwaite presented a report setting out the proposed work programme for future Regulatory Committee meetings.
- 7.2. The Committee requested that regular updates on management information should be provided to the Committee on a regular basis. The Committee also requested that a further discussion on measuring impact and what good looks like in this area is added to the work programme. The Committee requested that these two matters also include initial baseline data, to allow the Committee to measure development in these areas.

**ACTION: Corporate Governance to update the Regulatory Committee work programme to include: regular updates on management information on regulatory interventions; and measuring impact of regulatory interventions. Due date: 22/12/23**

## 8. [Any other business](#)

### **Smart Home devices**

- 8.1. The Board welcomed the background paper on the ICO's work on Smart Home devices, which gave the Board significant assurance about work in this area.

### **Penalty setting guidance – public consultation**

- 8.2. The Committee requested an update on the public consultation on penalty setting guidance, which was currently ongoing. The Committee was informed that all responses would be reviewed once the consultation had closed and therefore there was no substantive update to provide at this point. An update would be provided to the Committee's next meeting.

**ACTION: Claudia Berg to provide the Committee with information of the outcomes of the public consultation on penalty setting guidance. Due date: 7/3/24**

## 9. [Messages for Management Board](#)

- 9.1. The Committee agreed that the key messages from this meeting to share with Management Board would be in relation to the

regulatory risk project and public sector enforcement approach. The Committee agreed that this should highlight the importance, complexity and nuance about the challenges of upstream influence and evaluating impact of regulatory intervention. The Committee also agreed that it would be useful to provide similar messages from the discussion to ICO staff.

**ACTION: Corporate Governance to circulate draft messages emerging from the meeting. Due date: 15/12/23**

## Attendance

### Members

David Cooke	Non-Executive Director
Jeannette Lichner	Non-Executive Director
John Edwards (Chair)	Information Commissioner
Paul Arnold	DCEO and Chief Operating Officer
Peter Hustinx	Independent Member of the Regulatory Committee
Tracey Waltho	Non-Executive Director

### Attendees

Ange Balakrishnan	Executive Director, Strategic Communications and Public Affairs
Amanda Williams	Director of Public Affairs (for item 6)
Claudia Berg	General Counsel
Tony Luhman	PACE Product Owner (Director)
Tom Reynolds	Director of Economic Analysis (for item 6)

### Secretariat

Chris Braithwaite	Corporate Governance Manager
-------------------	------------------------------