

# Regulatory Committee minutes

18 April 2024

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

## 1. Introductions and apologies

- 1.1. Apologies for absence were received from Paul Arnold, Claudia Berg, Louise Byers and Tracey Waltho. Tim Capel attended the meeting to represent Claudia Berg.

## 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 following updates regarding actions from previous meetings were provided:
  - An update on key policy outputs would be provided during the meeting.
  - Information used to brief staff regarding the regulatory risk review project had been submitted to Management Board in March 2024.

## 4. Better Regulatory Interventions – regulatory transformation programme

### 4.1. **Overall programme update**

- 4.1.1. Emily Keaney presented a report providing a high level overview of progress with the regulatory transformation programme.
- 4.1.2. The Committee also received further information of the extent of activity covered by the regulatory activity framework within the programme. The Committee discussed the links between this framework, the updated fining guidance, the upcoming procedural guidance, and the

importance of transparency in these processes through the ICO's website.

- 4.1.3. The Committee complimented the progress made in delivery of the programme to date and the important transformation this represented in the organisation.
- 4.1.4. The Committee requested further information in future about how this transformation is being successfully embedded across the organisation, ensuring that staff understanding the value of the transformation and their role in.

#### 4.2. **Penalty Setting Guidance**

- 4.2.1. Tim Capel presented a report providing the Committee with an overview of the feedback received in the consultation on the data protection penalty setting guidance. The guidance had been published in March 2024.
- 4.2.2. The Committee asked for clarification about the application of the guidance to investigations which were currently in progress. The Committee was informed that the consultation had made clear that the intent was to apply this guidance to any cases which had not yet reached the Notice of Intent stage of the investigatory process at the point the guidance was published. This was consistent with the approach taken by other regulators. In addition, the guidance did not seek to increase the size of fines issued; it intended to provide more clarity on likely amounts of fines that would be issued.
- 4.2.3. The Committee emphasised the importance of consistent application of the guidance and received information about the quality assurance processes which were in place to ensure this.
- 4.2.4. The Committee also received information about the recovery of fines assessed. This had been particularly challenging with some fines under the Privacy and Electronic Communications (PECR) act, for which some additional powers had been received.
- 4.2.5. The Committee received further information about the benefits of a settlement policy, which was currently being considered and was a feature of peer regulators such as

FCA, CMA and Ofcom. This was being considered as part of development of the procedural guidance.

#### **4.3. Measuring impact of regulatory interventions**

4.3.1. Emily Keaney and Angeliki Lashand presented a report setting out the approach to measuring the impact of regulatory interventions.

4.3.2. The Committee agreed that the framework set out in the report appeared appropriate and was a strong piece of work. The Committee commented that measuring impact was an extremely complex area which may be challenging to deliver. In addition, even when impact was well measured, it could be equally challenging to explain this impact.

#### **4.4. Children's Strategy**

4.4.1. Emily Keaney provided an oral update on the Children's Strategy, which had been identified as a strategic priority for 2024/25. The key workstreams in this area in 2024/25 would focus on social media and video sharing sites, particularly in relation to their recommender systems, privacy settings, user profiling, geolocation and data processing.

4.4.2. The Committee thanked Emily for the update on this important area. The Committee asked for clarification regarding whether there were likely to be concerns about the ICO's work in this area from the video gaming industry. The Committee was informed that, at present, this industry was not a priority area for attention in the initial phase of this work. In addition, areas which may have the most public interest in this industry may be outside of the ICO's regulatory remit.

### **5. Current and emerging high profile regulatory activity**

#### **5.1. Supervision activity**

5.1.1. Stephen Bonner and Stephen Almond provided an overview of current and emerging high profile supervision activity. They particularly highlighted the fine issued to the Ministry of Defence for data breaches in relation to the evacuation from Afghanistan and the enforcement notice issued to

Serco to stop using biometric technology to track employees.

## 5.2. **Policy outputs**

- 5.2.1. Emily Keaney provided an overview of current and emerging high profile policy outputs. In addition to the update earlier in the meeting on Children's Privacy, she highlighted the outcome of the 3million hearing on the government's immigration exemption, enforcement against the Home Office in relation to migrant tagging, the call for views on a "consent or pay" approach to cookies, and the consultation on the use of Generative AI, as well as work on policy updates that would be required as part of implementation of the DPDI Bill.
- 5.2.2. The Committee was also informed that the ICO continued to engage with the Home Office in relation to the Rwanda refugee proposals, to ensure that personal data of refugees was sufficiently protected.
- 5.2.3. John Edwards also reported that the Communications Team had been awarded the Public Sector Campaign award at the PR Moment Awards for their Help Gran, Stop Spam campaign.

## 5.3. **Litigation deep dive**

- 5.3.1. John Edwards explained that the litigation deep dive which had been included on the agenda would now be discussed at the Committee's June meeting. He commented that the report which had been circulated to the Committee reflected an extremely positive direction of travel for the litigation team over the last couple of years.

## 6. **Guidance pipeline and Data Protection and Digital Information (DPDI) Bill implementation**

- 6.1. Emily Keaney presented a report providing the Board with information of the planned pipeline of upcoming guidance and how this aligned to implementation of the DPDI Bill. The pipeline, excluding DPDI elements, would shortly be published on the ICO's website. This would be updated once the timeline for the DPDI Bill was confirmed.

- 6.2. John Edwards provided an update on progress with discussions with DSIT on funding to deliver the requirements of the DPDI Bill.
- 6.3. The Committee discussed whether there were current areas of concern within latest iteration of the DPDI Bill, as well as the amendments which were emerging through Parliamentary process. The Committee also discussed the current position in relation to the ICO's continued independence and the current timeline for the Bill achieving Royal Assent.

## 7. Any other business

- 7.1. There were no items of other business.

## 8. Messages for Management Board

- 8.1. The Committee agreed that the key messages from this meeting to share with Management Board were progress with the regulatory transformation programme, publication of the penalty setting guidance, the children's strategy for 2024/25, as well as the level of activity in the policy and supervision areas.

## Attendance

### Members

John Edwards (Chair)	Information Commissioner
David Cooke	Non-Executive Director
Jeannette Lichner	Non-Executive Director
Stephen Bonner	Deputy Commissioner (Regulatory Supervision)
Emily Keaney	Deputy Commissioner (Regulatory Policy)
Melissa Mathieson	Director of Regulatory Policy Projects (Chair of Policy Board)
Peter Hustinx	Independent Member of the Regulatory Committee

### Attendees

Angela Balakrishan	Director of Strategic Communications and Public Affairs (for item 4.4)
Angeliki Lashand	Head of Economic Analysis (for item 4.3)
Tim Capel	Director of Legal Services (Enforcement)

### Secretariat

Chris Braithwaite	Corporate Governance Manager
Fiona Wilcock	Corporate Governance Officer