

Audit and Risk Committee – for assurance

Meeting agenda title: Reserves Policy

Meeting date: 10 October 2022

Time required: 15 minutes

Presenter: Angela Donaldson

Approved by: Paul Arnold

1. Objective and recommendation

- 1.1. The objective of this report is to give the Audit and Risk Committee (ARC) assurance relating to the Reserves Policy proposal and an update on progress getting this approved by DCMS / HMT.

2. Developing a common understanding

- 2.1. The ICO data protection (DP) fee reserves, which amount to £11.2m have arisen over a number of years, with a number of factors contributing, including challenges and delays in recruitment of key roles as well as the uncertainty when budgeting for litigation costs.
- 2.2. Previously, to implement the GDPR changes, the ICO had to borrow funding from DCMS which was paid back over time through projected increasing DP fee income. This was enabled by a significantly expanding fee register and increasing DP fee income forecast at the time.
- 2.3. Having the ability to utilise the ICO's reserves to implement ICO's transformation plan (ICO25) and the proposed legislative reforms provides the ability to self-fund these changes without the need to request additional funding from HMG. It also ensures that the DP fees in reserves are used to fund the data protection work, including the provision of support and guidance for SMEs, and other businesses, through the delivery of the objectives set out in ICO25.

3. Matters to consider to achieve objective

- 3.1. Whilst the ICO would also not need to request, and rely on, obtaining additional funding from DCMS to implement these changes, non-cash budgetary cover would need to be provided by DCMS to cover any proposed reserves expenditure in each financial

year. As a result, in order to use retained reserves, the ICO has to agree a policy with DCMS and HM Treasury (HMT) as to the circumstances when reserves can be utilised, and the process for doing so.

- 3.2. We have drafted a Reserves Policy which would enable access to reserves to enable us to self-fund the implementation costs of the ICO's transformation plan (ICO25) as well as the legislative reforms set out in the Data Protection and Digital Information Bill.
- 3.3. The proposed reserves policy to DCMS covers the following:
 - To fund implementation and transition costs relating to new statutory duties and objectives set by Government, reducing the risk that additional Government funding is needed to deliver the reforms. This would make the reforms and ICO transformation cost neutral for HMT;
 - To enable investment in multi-year change and transformation programmes, ensuring that the ICO can deliver its strategic objectives without any impact on the delivery of its front line public services and business as usual; and
 - To provide suitable cash coverage during each financial year for profiling differences in the income and expenditure. This item would not require budgetary cover.
- 3.4. Initially the ICO had also proposed that the reserves be used to underwrite DP income risks, but this was challenged by DCMS as all public bodies are expected to manage expenditure within 1% surplus and ensure that budgets are not exceeded. Therefore, the current economic impact and risk relating to DP fee income has been discussed with DCMS separately since early in the financial year outside of the reserves policy proposals.
- 3.5. DCMS are supportive of the proposed reserves policy. An initial discussion took place between DCMS and HMT outlining the proposal in early September to start the HMT engagement and a formal paper is now being progressed to request approval from both DCMS and HMT. This paper will focus specifically on requesting approval to fund the implementation of ICO25 and DP reforms from existing reserves.
- 3.6. Following HMT approval of the paper, the relevant reserves funding and subsequent non cash budgetary cover would be agreed with

DCMS by the ICO submitting a five case business case for approval. The ICO25 business case is planned for Q4 2022/23 and the DP reforms case will follow at the relevant time.

- 3.7. The ICO's Management Agreement with DCMS is due for review imminently and there is an opportunity to include any changes to the use of reserves, as well as a change in the reserves that the ICO is permitted to retain, in a revised version.

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Consultees: Louise Byers.

List of Annexes: None

Publication decision: Report can be published internally and externally without redaction.