Regulatory Committee minutes

24 April 2023

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

1.   Introductions and apologies

1.1.   Apologies for absence were received from John Edwards and Claudia Berg. Paul Arnold would chair the meeting in John's absence. Introductions took place.

1.2.   Paul Arnold welcomed everyone to the first meeting of the Committee. He explained that the agenda for the first meeting had been intended to give an overview of the regulatory governance and structure, and future meetings would focus on specific aspects of this.

2.   Declarations of interests

2.1.   No declarations of interests were made.

3.   Overview of regulatory work under the lens of Regulatory Action and Activity corporate risk (R90)

3.1.   Paul Arnold presented a report giving the Committee information about existing and planned controls and mitigations for the Regulatory Action and Activity corporate risk. This provided information of a planned project to further manage and mitigate this risk. This project was expected to be a significant initial part of the Committee's work programme for future meetings.

3.2.   The Committee particularly discussed the key risks for the regulatory activity corporate risk and the existing mitigations and controls, through the lens of some key cases. The Committee commented that it would be useful for them to receive some case studies to future meetings to provide further detail of this, including the context of how the project would further mitigate these risks.

ACTION: Stephen Bonner to provide case studies to future Committee meetings, giving the Committee further information on the existing risks, controls and mitigations for the regulatory processes. Due date: 29/6/23

3.3.   The Committee received confirmation that the project would be an end-to-end review of the regulatory process, from how decisions are made on which cases are investigated to how sanctions are decided. The Committee welcomed the desire for a higher proportion of proactive investigations, as a focus on investigations based on organisations reporting data protection breaches could drive perverse incentives away from reporting such breaches.

3.4.   The Committee also discussed:

- The potential benefits of providing clearer information on the ICO's website about the regulatory processes for typical cases.

- The importance of drawing on academia in this work, to ensure that the approaches reflected best practice. The Committee received assurance that the ICO was already drawing on the work of a range of academics but would extend the range of this aspect of the project.

- The importance of clear communication with the regulated community, to ensure that it did not feel like the ICO was changing their approach multiple times. The Committee also noted that, depending on the outcomes of the project, it may also be a significant cultural shift for the ICO and therefore take significant effort to fully embed.

- The potential benefits to organisations of clearer penalty setting mechanisms, if this was the preferred approach. This may help to move from data protection being seen as an additional compliance cost to data protection by design being seen as a cost saver.

- The expected timeline for the Data Protection and Digital Information (DPDI) Bill to achieve royal assent and the timescales for new provisions coming into force thereafter, subject to the parliamentary process and any changes emerging as part of this.

- The impact of proposed new duties in DPDI, particularly the duty to have regard to innovation.

- The links between this project and the overall change and transformation workstream.

3.5.   The Committee noted the report and would receive an update on the project to the Committee's next meeting.

ACTION: Paul Arnold to provide an update on the regulatory action and activity project to the Committee's next meeting. 29/6/23

4. PACE and Operation Calder lessons learned

4.1. Stephen Bonner and Jen Green provided the Committee with a presentation on lessons learned to date from the Operation Calder prioritise, act, collaborate and engage (PACE) project. The next phase of PACE projects was due to commence shortly and the lessons learned would be factored into this phase, with further evaluation following this.

4.2. The Committee welcomed the excellent level of engagement in the lessons learned exercise and hoped that this continued as the PACE processes continued to be developed.

4.3. The Committee discussed the extent to which PACE projects challenged the underlying resources model for regulatory work and the extent to which this would reflect the overall resourcing model in the long-term. The Committee also discussed the extent of cultural change to move towards more multidisciplinary working groups and the timescale for such a cultural shift.

4.4. The Committee discussed the challenges in resourcing PACE teams, particularly around ensuring that staff were able and empowered to create capacity while working in PACE teams through stopping work on other activities. The Committee noted that this had typically been a struggle due to staff being enthusiastic and committed to other work, rather than being required by management to continue that work. The Committee also noted that future PACE teams may trial formal secondments to see whether this helped to create more clarity and empowerment.

4.5. The Committee also discussed the links between PACE teams and staff recognition models, including ensuring opportunities to be involved in PACE teams were available to staff who wanted these opportunities, while ensuring that staff who did not thrive in this sort of environment were still able to deliver key work, whether from within PACE teams or outside of them.

5. Guidance during law reform

5.1. Emily Keaney presented a report giving an overview of the approach to guidance during law reform and the extent to which

this can provide regulatory certainty during the passage of the DPDI Bill. Executive Team had reviewed and agreed the proposed approach.

5.2. The Committee welcomed the report and discussed the likely amount of guidance which was likely to need substantive change following the passage of the DPDI Bill. This would depend on the final contents of the bill, but was expected to affect roughly a quarter of guidance.

6.   SME Data Essentials pilot evaluation and lessons learned

6.1. Tom Reynolds and Alison O'Connor attended the meeting to make a presentation setting out the findings of the evaluation of the SME Data Essentials pilot, which was one of the ICO 25 outputs. This project had been aimed at providing e-learning modules and projects for enabling SMEs.

6.2. The Committee welcomed the success of the pilot, particularly noting the benefits to the organisations that had been involved in the pilot.

6.3. The Committee discussed the next phase for wider roll-out of the project, which would include further monitoring, understanding how organisations learned about and accessed the information available, the best ways to engage with small businesses to raise awareness of these resources, and the potential business benefits for organisations to demonstrate their compliance with regulation.

6.4. Jeannette Lichner commented that she had experience of driving business engagement with a similar pilot from another organisation and could provide learnings from this to the team.

ACTION: Tom Reynolds and Jeannette Lichner to discuss possible best practice in driving business engagement with similar projects to the SME Data Essentials. Due date: 29/6/23

7.   Current and emerging high profile regulatory activity

7.1. Stephen Bonner and Emily Keaney provided an overview of current and emerging high profile regulatory activity. They particularly highlighted the enforcement action taken against TikTok and against Sussex and Surrey police force over the last couple of months, both of which had gained significant interest. They also provided an overview of some of the key current projects which may lead to regulatory activities and some potential new projects

which may shortly be launched. They also highlighted the work to develop the Journalism Code, which had included significant engagement with the sector.

7.2. The Committee commented that it would be useful to receive fewer but more in-depth updates to future meetings, and this item would likely need more time allocated to it in future.

8. Messages for Management Board

8.1. The Committee agreed that the key message from this meeting to share with Management Board was in relation to the regulatory risk project, given the breadth and depth of this review and the links to the ICO's new duties in the DPDI Bill. The Committee agreed that it would be also useful to update the Board on the approach to guidance during the passage of DPDI.

9. Any other business

9.1. There were no items of other business.

Attendance

Members

Paul Arnold (Chair)	DCEO and Chief Operating Officer
David Cooke	Non-Executive Director
Emily Keaney	Deputy Commissioner (Regulatory Policy)
Jeannette Lichner	Non-Executive Director
Melissa Mathieson	Director of Regulatory Policy Projects (Chair of Policy Board)
Peter Hustinx	Independent Member of the Regulatory Committee
Stephen Bonner	Deputy Commissioner (Regulatory Supervision)
Tracey Waltho	Non-Executive Director

Attendees

Alison O'Connor	Head of Economic Analysis (for item 6)
Angela Balakrishnan	Executive Director, Strategic Communications and Public Affairs (for item 7)
Louise Byers	Director of Corporate Planning, Risk and Governance
Jen Green	Executive Director (Strategic Change and Transformation) (for item 4)
Jacob Harris	Private Secretary to the Information Commissioner
John Kavanagh	Director of Governance Transition
Tom Reynolds	Director – Chief Economist (for item 6)

Secretariat

Chris Braithwaite   Corporate Governance Manager
Fiona Wilcock   Corporate Governance Officer