Regulatory Committee minutes

7 September 2023

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, Stephen Bonner and Tracey Waltho.

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.

3.2.   The Committee noted that it had discussed the development of the Children's Privacy Strategy at the previous meeting and asked for an update on this work. Emily Keaney explained that development was continuing, and a version would be presented to the Committee's next meeting.

ACTION: Emily Keaney and Stephen Bonner to bring a report to the next Regulatory Committee meeting setting out the Children's Privacy Strategy. Due date: 7/12/23

Actions

3.3.   All actions from previous meetings had been completed.

4.   Regulatory risk project update

4.1.   Emily Keaney, Tim Capel and Angeliki Lashand presented a report providing the Committee with an update on progress with the regulatory risk review project. This included a particular focus on the development of the Regulatory Action Framework, providing information on developments to date and details of what the framework encompassed, including prioritisation, governance and decision-making, and the range of regulatory powers available. The Committee noted the distinction between defined questions (which cover areas which the ICO already has some experience of

dealing with) and multiplex questions (which are novel, significant and/or complicated e.g. quantum of fines, extraterritoriality, principled legal questions).

4.2. The Committee also received information regarding development of penalty-setting and procedural guidance, and the review of the end-to-end enforcement process. The Committee noted that the penalty-setting guidance is due to go to consultation, and the intention is to move away from a single procedural guidance document.

4.3. The Committee discussed the role of the proposed new Regulatory Action Board (RAB) in relation to the role of the Regulatory Committee. The RAB may be a sub-committee of the Management Board, or may be at an executive-level Board; this was currently being considered, but would initially be established as an executive-level board prior to the completion of governance transition. The RAB will have operational involvement in decision-making, progression and delivery; Regulatory Committee will continue to have oversight of activities.

4.4. The Committee also discussed the wide range of regulatory actions available to the ICO, and the importance of being able to quickly explain the different purposes of possible actions, both internally and externally. This was an issue that the project team would ensure was a focus of the cultural change resulting from the project, ensuring that staff were comfortable using a wide range of different regulatory approaches.

4.5. The RAB would also be key in ensuring consistency of approach and decision-making. It would also be important to ensure that staff at all levels had the appropriate knowledge to take the most appropriate approach or to pass to another team, and that mechanisms were in place to give the Board assurance that the most appropriate approach was consistently being taken. The Board noted the importance of making connections, when relevant information is received via several routes.

4.6. The Committee also discussed the importance of ongoing and effective learning across the whole organisation to embed and continuously develop the effectiveness of the framework.

4.7. The Committee reflected on the risks to the regulatory risk project as a whole. The Committee commented that the mitigating actions identified appeared to be appropriate, but the risks were significant

given the importance of the project. The Committee also discussed the factors that increased the risks of the transformation project failing, given the other change projects within the ICO. The Committee noted that IT transformation was often a significant risk to projects; the Committee was informed that IT transformation work was not a significant part of this project.

5. Current and emerging high profile regulatory activity

5.1. Emily Keaney, Claudia Berg and Tony Luhman provided the Committee with an update on current and upcoming key supervision activity, policy outputs and legal issues. This included:

- an overview of the recently completed investigation into the NHS Lanarkshire data breach;

- an investigation that would shortly be completed in relation to use of staff biometric data at leisure facilities, noting that the upcoming guidance on employee monitoring would be published in conjunction with the results.

- ongoing investigations of the recent Police Service of Northern Ireland (PSNI) data breach and the Capita ransomware attack;

- work with the Home Office in relation to their pilot of electronic tagging of migrants;

- current litigation matters, including cases relating to Clearview, TikTok and Experian. A litigation update would be provided to a future Management Board meeting.

5.2. The Committee discussed whether these cases would have been identified as multiplex or defined in the Regulation Action Framework, previously discussed, noting that classifications might change over the course of the ICO's involvement.

6. NIS reform update

6.1. Emily Keaney provided the Committee with information on the current status of NIS reform and the steps being taken, including the Government's development of its policy intent in this area and the what the limitations of the current legislation may potentially be.

6.2. The Committee was informed that the Government's current indicative policy intent was to transition from the ICO having a retrospective responsibility for NIS breaches towards a more

proactive responsibility to be assured on the security of NIS. This appeared to be a potentially significant risk for the ICO given available resources and powers, particularly as the ICO did not currently have authority to designate organisations as within the NIS framework. The Committee agreed that this was a potentially significant risk and it would be important to work with government to understand and mitigate these risks. The Committee was informed that there not currently any defined timescales for this work.

7. Prioritisation Framework

7.1. Rob Holtom and Christina Barnes provided the Committee with information about the work of the new Prioritisation Team and a summary of the prioritisation framework app and how it will be used. The app had been launched earlier in the current week; an initial review would take place in December 2023.

7.2. The Committee discussed the potential links between this app and the need for consistency when applying the Regulatory Action Framework. The Committee also discussed the approach and timescale for development of the app. The Committee discussed the benefits of the app in considering the opportunity cost of interventions, including tailoring the scope of interventions to maximise value for money.

7.3. The Committee was informed that the framework had been designed to be transparent, ensuring consistent application across the organisation. The Committee cautioned of the potential risk of a chilling effect of transparency and discussed how this could be mitigated. The Committee also commented that the framework needed to be a mandatory part of formal processes, to ensure consistency. It would also be important to ensure that interventions were regularly re-assessed, to ensure that they continued to be best value.

8. Messages for Management Board

8.1. The Committee agreed that the key messages from this meeting to share with Management Board were:

- the progress made by the regulatory risk project to date was to be applauded;
- the key risks highlighted in the regulatory risk project should be shared with the Board in full.

- the importance of delivering cultural change to underpin the regulatory risk project.

9. Any other business

Data Protection and Digital Information (DPDI) Bill update

9.1. Emily Keaney provided an update regarding progress with the DPDI Bill. The Bill was expected to reach the next stage of the parliamentary process following the party conference recess in October 2023. There was still scope for change to the Bill, but at present it appeared that majority of the concerns raised by the ICO during the consultation would be addressed. Work to plan for the implementation of the Bill had begun, but commencement schedules were still awaited.

UK and Rwanda Migration and Economic Development Partnership

9.2. John Edwards explained that earlier in the week he had received the Home Office's assessment of the data transfer risks in relation to the government's Rwanda Migrant Immigration plan. Review of this was currently ongoing, following which the Commissioner's view of the risks would be fed back to the Home Office.

Smart home devices

9.3. Jeannette Lichner highlighted the day's press coverage regarding smart home devices and requested that the Committee be provided with further information about the ICO's work in this area at its next meeting.

ACTION: Stephen Almond to provide an update to the Committee's next meeting regarding the ICO's work on Smart Home gadgets. Due date: 7/12/23

Attendance

Members

John Edwards (Chair)	Information Commissioner
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

Attendees

Angeliki Lashand	Head of Economic Analysis (for item 4)
Christina Barnes	Head of Prioritisation (for item 7)
Claudia Berg	General Counsel
Louise Byers	Director of Risk and Governance
Rob Holtom	Executive Director, Corporate Digital, Data and Technology (DDaT), Transformation and Change (for item 7)
Tim Capel	Director of Legal Services (for item 4)
Tony Luhman	Director of PACE projects (for item 5)

Secretariat

Chris Braithwaite	Corporate Governance Manager
Fiona Wilcock	Corporate Governance Officer