Regulatory Panel terms of reference

1. Purpose

1.1. The Regulatory Panel ("the Panel") will be convened at the recommendation of the Commissioner, or at the instigation of the decision maker. The Panel will make recommendations to the decision maker in any specific case. The decision maker will be the Commissioner or the appropriate person to whom the Commissioner has delegated authority, in line with the Scheme of Delegations.

1.2. The Panel’s purpose is to make independent recommendations to the decision maker regarding proposed regulatory action as a result of breaches of legislation by data controllers or data processors. This may include consideration of the range of fines and other corrective measures which it would consider to be appropriate in all the circumstances.

1.3. The Panel will usually advise on cases relating to breaches of the Data Protection Act 2018 (DPA18), General Data Protection Regulation (GDPR) or Network Information Systems (NIS) regulations, where the ICO’s Penalty Setting Meeting (PSM) recommends a fine in excess of £5m, or in circumstances where any proposed penalty or regulatory action is likely to cause a very significant financial impact on the recipient’s business model. The Commissioner or decision maker may also choose to consult the Panel on other proposed regulatory action under DPA 18 (and GDPR) or NIS not falling within the above circumstances where they consider it appropriate to do so.

1.4. The Panel will not consider cases in relation to any other legislation which the ICO regulates.

1.5. The Panel is advisory and makes recommendations to the decision maker but does not itself take the final decision on matters it advises upon. The decision maker will take account of the views of the Panel when making their decision, and will document the extent to which their final decision has done so and the reasons why.

2. Responsibilities
2.1. To fulfil this purpose, the Panel convenes in applicable cases after a Notice of Intent (NOI) for a fine or preliminary enforcement notice (PEN) has been issued and representations received in response.

2.2. The panel is responsible for:
   - considering whether the fine (and/or any corrective measures) are effective, proportionate and dissuasive. It will do this by:
     - assessing the evidence in the case;
     - applying all relevant considerations of the relevant legislation;
     - taking into account the recommendations of the Penalty Setting Meeting;
     - reviewing previous regulatory action taken by the ICO to ensure that the proposed action is consistent in scale and scope with previous action; and
     - considering any representations already received from organisations regarding the NOI/PEN.

2.3. The proposed recipient of the fine and/or corrective measures is not permitted to attend the meeting of the Panel.

2.4. The Panel will then recommend to the decision maker the range of fine and/or corrective measures which it would consider to be appropriate.

2.5. The Panel will not usually meet when Article 60 of GDPR (or other similar legislation) applies to the case in question. The Commissioner has determined that the Article 60 process provides sufficient independent scrutiny and advice on proposed regulatory action that additional input from the Regulatory Panel will not generally be required.

3. Authority

3.1. The Panel makes recommendations to decision makers and has no decision-making power of its own.

4. Composition

4.1. Each meeting of the Panel comprises three members, drawn from a pool of potential members. Members are appointed to this pool by the Commissioner. The membership pool will be a mix of:
• A Non-executive Director of the ICO’s Management Board, who will chair the meeting;
• ICO staff (at Level G2 or above); and
• External members as subject matter experts. This may include, but is not limited to, members of the ICO’s advisory panels\(^1\).

4.2. Members for each meeting of the Panel will be selected based on the areas of expertise required to consider the case and panel member availability.

4.3. ICO staff representatives on any Panel will not have been involved in, or responsible for, any part of the investigation of the breach. Panel members will be asked to make a declaration of this at each meeting.

4.4. All members of the pool are considered to be an agent of the Commissioner and as such are subject to the provisions within section 132 of the DPA 18 regarding confidentiality of information.

4.5. All potential panel members will be advised of the cases that will be considered at each meeting and required to disclose any potential conflicts of interest with respect to the parties involved in each case.

5. **Quorum**

5.1. All three members of the Panel must be present for the meeting to be quorate. Members may attend the panel virtually (e.g. by video or teleconference).

6. **Information requirements**

6.1. The Panel should ensure that arrangements are in place to enable it to discharge its responsibilities effectively, including the timely provision of information in an appropriate form and quality. The Chief Regulatory Officer is responsible for ensuring that the Panel is provided with the information required.

7. **Budget**

7.1. The Panel has no budget. Any spending required will be funded from the relevant Service’s budget.

8. **Secretariat**

\(^1\) E.g. Technology advisory panel
8.1. Secretariat is provided by the Corporate Governance Team.

8.2. Secretariat will produce a record the Panel’s recommendation to the Commissioner and the reasoning behind it.

9. Frequency of meetings

9.1. The Panel will meet whenever required by the ICO’s proposed regulatory action.

10. Evaluation

10.1. The Panel should ensure that arrangements are in place to enable it to discharge its responsibilities effectively, including a regular formal evaluation of the Panel’s performance.

11. Publication of papers

11.1. Agendas, reports and minutes of Panel meetings will not be published, either internally or externally.

12. Links to other forums

12.1. When considering individual cases, the Panel will report directly to the decision maker.

12.2. When considering matters of consistency between cases, or similar issues, the Panel will report to the Commissioner or Chief Regulatory Officer as appropriate.