

Information Rights Committee minutes **Tuesday 12 May 2015**

Members and other attendees present

Anne Jones	Assistant Commissioner - Wales
Christopher Graham	Information Commissioner
David Smith	Deputy Commissioner, Director of Data Protection
Graham Smith	Deputy Commissioner, Freedom of Information
Jonathan Bamford	Head of Strategic Liaison
Ken Macdonald	Assistant Commissioner – Scotland and Northern Ireland
Louise Byers	Head of Good Practice
Paul Arnold	Head of Customer Contact and Business Development
Robert Parker	Head of Corporate Affairs
Simon Entwisle	Deputy Chief Executive Officer
Steve Eckersley	Head of Enforcement
Steve Wood	Head of Policy Delivery
Neil Bostock	Corporate Governance Officer (Secretariat)
Ian Inman (item 5)	Senior Policy Officer
Simon Rice (item 6)	Group Manager, Technology

1. Introductions and apologies

- 1.1. Apologies were received from Andy Laing.

2. Matters arising from the previous meeting

Minutes

- 2.1. No further comments were received on the minutes which had previously been approved by correspondence.

Action points

- 2.2. It was agreed that the one outstanding action point relating to proactive publication of the Information Rights report remains outstanding.

3. Areas for monitoring

Issue

- 3.1. The four specific areas the committee had agreed to monitor on a regular basis were considered.
- 3.2. **Effective use of civil monetary penalties (CMPs) –**
3.2.1. There were no specific matters of concern in this area. However since the last IRC meeting the law had been changed to lower the threshold at which the ICO could take enforcement action under the PECR which could lead to more CMPs being issued in future.
- 3.3. **Press engagement post Leveson**
3.3.1. There were no specific matters of concern in this area.
- 3.4. **Take down of search engine links**
3.4.1. In around three quarters of the cases that have been brought to the ICO's attention the outcome was found to be in favour of Google. Others have been resolved through discussion with Google. There are only a small number where a difference remains. There was ongoing consideration of these cases. Overall the process has been managed well.
- 3.5. **NHS and other structural changes in the public sector**
3.5.1. In respect of England and the NHS there were no more significant changes anticipated in this area.
3.5.2. Changes in Northern Ireland and Wales continue to be monitored carefully with stakeholder engagement at senior levels.

Decisions

- 3.6. It was decided to remove "press engagement post Leveson" as an area for monitoring.
- 3.7. A new area for monitoring was agreed as being "data sharing – the ICO response to Government plans".
- 3.8. The remaining areas for monitoring would continue with the one on effective use of CMPs concentrating on CMPs arising from the recent change in threshold for PECR cases.

3.9 Steve Eckersley would bring a paper to the next meeting outlining the impact of the PECR threshold changes on the CMP, penalty setting process.

4. The future of the Personal Information Promise.

Issue

- 4.1. The Personal Information Promise (PIP) was launched in 2009. Its aim was to ensure those at the top of organisations were committed to ensuring that personal data was looked after.
- 4.2. The IRC was asked to consider the future of the PIP. Should it be continued as a regulatory tool, or withdrawn as it had possibly been superseded by other initiatives.

Decisions

- 4.3. It was decided to maintain the PIP in its current format for the time being, and review it again in 12 months' time by which time the privacy seals scheme and the SME self-assessment toolkit should be fully operational.
- 4.4. Performance Improvement will assume overall responsibility for the PIP. Maintaining the list of organisations that have signed up to the Promise will rest with Corporate Affairs.

5. The growing impact of ECHR and the Charter of Fundamental Rights on Data Protection

Issue

- 5.1. Given the recent trend towards privacy assertive legal rulings from European and UK courts on information rights, this agenda item was an opportunity to explore how examples and precedents from case law could be shared internally - and be reflected in ICO decisions.
- 5.2. The IRC was asked to consider how the ICO's approach to casework could take account of emerging case law and rulings.

Decisions

- 5.3. IRC welcomed the Courts view on the importance of the DPA and ICO's role as important safeguards for individuals. It agreed that complaint handling processes need to be compatible with the Courts view on bringing cases to the ICO but that existing processes should be flexible enough to achieve this. It was decided to pass this matter to the Strategic Tasking and Coordinating group for consideration and to oversee the detail. Steve Wood agreed to make some amendments to the paper to explain the Project Eagle approach in more detail.

6. Payment card fraud and data breaches

Issue

- 6.1. There is a link between individuals being victims of a data breach and subsequently suffering from payment card fraud. The strength of the link is important because it is necessary to demonstrate the likelihood of substantial damage or substantial distress in the case of a data breach if a civil monetary penalty is to be imposed. The extent of the risks of fraud subsequently following is a relevant factor.
- 6.2. The IRC was asked to approve a research proposal to test the extent of the hypothesis that being subject to a data breach leads to an increased risk of suffering payment card fraud.

Decisions

- 6.3. IRC agreed to commission the research.

7. Progress review of Priority Area Action Groups

Issue

- 7.1. Three of the four Priority Area Action Groups (PAAGs) presented their annual reports.
- 7.2. **Small and medium sized enterprises**
 - 7.2.1. The group has recently formed as a PAAG and has begun to draft a strategy and action plan for 2015-16 structured around four key aims.
- 7.3. **Support for individuals**
 - 7.3.1. The group was created late in 2014 and has met once to date. A second meeting is scheduled to discuss how the ICO can best meet the commitments made to support individuals in the current ICO Corporate Plan.
- 7.4. **Emerging technologies**
 - 7.4.1. It was recommended by the Chair of this PAAG to continue with it for 2015-16. Interesting and topical work on big data, mobile apps and the internet of things would help to ensure that the ICO remained at the forefront of addressing privacy concerns arising from new technology.
- 7.5. **Health and social care**
 - 7.5.1. The Chair of this PAAG was unable to attend the meeting and had given her apologies.

Decisions

- 7.6. It was decided to defer the review of the Health and Social Care PAAG until the next IRC meeting when its future should also be considered as part of the review.
- 7.7. A decision was taken to keep the remaining three PAAG areas for 2015-16.

8. Research

Issue

- 8.1. Members were asked for updates on current research projects and their budgets.
- 8.2. The research project on individuals' expectations of privacy and data protection authorities to help inform debate at the European Spring Conference was now complete.
- 8.3. The customer satisfaction survey had now begun with meetings arranged between the supplier, BDRC, and various ICO departments.

Decisions

- 8.4. A paper will be brought to the next IRC meeting on research on how to best integrate information rights training into higher education.

9. Key information rights developments

- 9.1. The Management Board information rights report was presented for information
- 9.2. The ICO was awaiting the Court of Appeal judgment in the Dransfield/Craven case.
- 9.3. Despite the ICO having recently won the IPSA appeal, a further appeal to the Supreme Court was possible.
- 9.4. IRC discussed the likely impact of the new Government's legislative programme on information rights.

10. Any other business

- 10.1. There was no other business.