

## **Management Board minutes**

Monday 22 July 2013

### **Members and other attendees present**

Daniel Benjamin	Director of Corporate Services
Simon Entwisle	Director of Operations
Christopher Graham	Information Commissioner (chair)
Andrew Hind	Non-executive Director
Neil Masom	Non-executive Director
Jane May	Non-executive Director
Enid Rowlands	Non-executive Director
David Smith	Deputy Commissioner Data Protection
Graham Smith	Deputy Commissioner Freedom of Information
Ian Watmore	Non-executive Director designate (observer)
Peter Bloomfield	Senior Corporate Governance Manager (secretariat)
Hannah Cutler	Corporate Governance Officer (secretariat)

### **1. Introductions and apologies**

- 1.1. There were no apologies.
- 1.2. Ian Watmore was introduced and welcomed as the non-executive director designate; replacing Jane May as of the next meeting. Ian had been invited to the meeting as an observer.

### **2. Declaration of interests**

- 2.1. There were no declarations of interest.

### **3. Action points from the Management Board meeting of 22 April 2013**

- 3.1. The minutes had been agreed by correspondence and were provided for information
- 3.2. There was one outstanding action from the meeting; for Executive Team to consider how best to improve the reporting mechanism to make it more objective. This remained outstanding.

### **4. Commissioner's forward look**

#### Major issues affecting the ICO

- 4.1. The Ministry of Justice has confirmed the Government's intention to recommend to HM The Queen that Christopher Graham is reappointed as Information Commissioner for a period of two years following his current tenure ending in June next year.
- 4.2. Simon Entwisle is to give evidence on how the ICO was helping deal with nuisance calls and spam texts at the Culture Media and Sport Select Committee. There was a suggestion that the number of calls and texts was reducing.
- 4.3. The ICO stance on the naming of officials in public authorities in several recent cases had been well articulated and understood.
- 4.4. The ICO is running an event with journalists in September in response to a recommendation from the Leveson Inquiry. In addition there was an update on the Government consultation on changes to the Data Protection Act arising from Leveson.
- 4.5. ICO involvement in the Article 29 Working Group was discussed in detail. European issues are currently taking up a lot of time and the need for better support for senior managers was raised. The Board supported the intended approach.

#### Risk register

- 4.6. The risk register was considered. Risk 6, relating to the replacement of the DUIS system (which administered the ICO's notification scheme) and to the successful handover of the IT service contract to Northgate, was now considered cleared by Executive Team. Both actions had been completed successfully.
- 4.7. The Executive Team was challenged on risk 5, staff morale, and when the risk status might be considered to

have reduced enough to take the risk off the register. Mitigating actions are linked to action plans arising from discussion of the staff survey. It would be a judgement call as to when the risk might have reduced enough to remove from the register but in the meantime the status was being monitored.

- 4.8. The high rate of staff turnover in quarter 1 was identified as a potential risk. The quarter's figures could be a one off but when extrapolated they equated to a 19% turnover rate for the year as a whole. Much of the turnover was thought to be caused by staff leaving for career development. If the rate of turnover remained high further analysis and discussion would be needed at the next Remuneration Committee.

**Acton point 1: Peter Bloomfield to advise the Head of Organisational Development that, if staff turnover remained high at the time of the next Remuneration Committee, there would be a need for analysis and discussion of the causes and impact.**

- 4.9. The link between high turnover and risk 4, succession planning, was noted. If good staff left this made succession planning all the more difficult; in particular in respect of more senior positions.
- 4.10. The reputational risk was also considered in detail, in particular whether the risk status would ever fall such that the risk could be removed from the register. It was noted that the ICO was much more sure-footed over the handling of high profile issues than it had been and that trust had built up, but it was conceded that the risk would potentially remain.

#### Key questions

- 4.11. Key questions for the ICO to be able to answer in the affirmative had been identified at the last Management Board strategy day. The latest update on the questions was presented for discussion.
- 4.12. Simon Entwisle updated the Board on work being done with first line managers on identifying what they needed to do their job. This was work aimed at increasing management competency across the ICO.

## **5. Future funding models for the ICO**

- 5.1. Christopher Graham introduced the recently completed research commissioned by the ICO into various regulatory

funding models in order to help inform decisions on how the ICO should be funded long term. The triggers for the work included the possible introduction of the EU data protection regulation which currently proposes removing the requirement for data controllers to notify, and the ICO's long standing desire to be funded on one information rights basis rather than the current separate data protection and freedom of information funding streams.

- 5.2. The report had been shared with the Ministry of Justice at the recent liaison meeting, and officials were keen on working together to identify the strongest options before a joint presentation to ministers. The report recommended a combination of a levy and charges on the principle of polluter pays.
- 5.3. A link between fining and funding was not ruled out; albeit as a small proportion of total funding so as not to affect individual decisions on fines.
- 5.4. The need to ensure that there were no unintended consequences, or perverse incentives, built into any new funding model was recognised. In addition it was the view that whatever model was introduced, it needed to be simple and transparent.
- 5.5. Financial certainty was a requirement, at least in the first instance, as an aid to planning.

**Action point 2: Executive Team to pull together options for the Ministry of Justice and to feed back to Management Board on progress.**

## **6. Immediate funding pressures**

- 6.1. This item provided an opportunity for the Board to discuss short term (2014/15) funding issues.
- 6.2. The ICO had met the increasingly tight grant in aid settlements from the last spending review of a year on year reduction of £250,000. A final reduction of at least £250,000 was planned for in 2014/15. As grant in aid these reductions affected freedom of information work.
- 6.3. The Ministry of Justice had recently agreed to cuts in its grant in aid of 10% for 2015/16; an element which may well be passed on to the ICO, and there is a possible further 5% cut (£600k for the ICO) planned in income from regulators' charges.
- 6.4. To date reductions in income had not been met by a reduction in the service the ICO offered; the ICO has

managed to work more efficiently. However with increasing workloads as well as reducing income, finding efficiencies which did not impact on service was becoming harder. The risk was that all discretionary expenditure would have to stop.

- 6.5. In parallel with the budgeting uncertainty there are concerns about the applicability of Ministry of Justice expenditure controls (for example on marketing, IT and travel) to the ICO. The ICO is a separate independent body, and the concern is that funding controls might have an impact on that independence.
- 6.6. To aid planning, the need for Government to be clear as to what income the ICO could expect, as early as possible, was highlighted. For its part the ICO needed to be clear about what it could **not** do if income was cut further; and where additional responsibilities for the ICO were proposed, the extra costs need to be met.
- 6.7. There was the possibility of the ICO charging for its services in future, for example for conferences, accreditation of privacy seals, training and audits. However doing so would not bring in a lot of income and depending on how well it was done could have a negative affect; ie reduce numbers at conferences.

**Action point 3: Executive Team to prepare a budget for 2014/15 and to report back to the Management Board.**

## **7. Finance report**

- 7.1. The income and expenditure report for June was presented for information. The successful rating appeal for Wycliffe House was noted.
- 7.2. Data protection notification fee income was down due to backlogs which had built up during the transfer from DUIS, the old IT system which had been used to administer notifications, to ICE. Card payments could now be accepted for notifications and 25% of payments during June were by card.
- 7.3. The recovery of unpaid civil monetary penalties was discussed. At issue was the extent to which the ICO should (and could) spend money on recovering penalties, especially if ultimately some penalties were never paid. It was reported that the Ministry of Justice are receptive to the recovery of ICO costs in this area from penalties paid.

- 7.4. Civil monetary penalties for offences under PECR were discussed further. There are concerns about the requirement to show substantial damage and distress when what was happening was minor inconvenience to many people; ie in receiving spam texts.
- 7.5. The results of a recent HMRC compliance audit were discussed, in particular in relation to the taxability of expenses for non-executive directors.

**Action point 4: Christopher Graham to confer with the Head of Finance as to the best way forward on the matter.**

## **8. Performance against the ICO Plan**

- 8.1. There was discussion on the format of the report and whether or not commentary was needed if the status of performance against an objective was green. The instructions indicated not but some people did provide commentary and there was a view that commentary was helpful in explaining performance. **It was agreed that commentary could be provided even when performance was indicated as green.**

**Action point 5: Peter Bloomfield to update the instructions on the report to allow commentary in all circumstances.**

- 8.2. It was also requested that where a measure was given for an objective, the report should be on performance against that measure.
- 8.3. Inconsistencies in applying a particular status to an objective were discussed. An indication as to the direction of travel was what was required.
- 8.4. Performance against individual objectives was discussed and explained. In respect of the delayed introduction of an assurance framework the impact would be on the ICO's reputation.

## **9. Issues reports**

### Operations

- 9.1. Simon Entwisle explained that whilst performance in clearing work was increasing, work-loads were also increasing. This included telephone calls which had increased because of the move from DUIS to ICE. It was only in the

area of advice where reductions were being seen, thought to be because of success in directing people to the website for the answer to their question.

9.2. In respect of data protection work the ICO was looking at changing the way it deals with individual cases, encouraging more use of self service facilities, and spending less time on taking forward individual complaints. Ways of smoothing out peaks in performance over the year were also being considered.

9.3. Staff turnover in Operations remained an issue, generating as it did extra work for managers and HR in recruiting.

#### Information rights

9.4. The report on current areas of interest in the information rights arena was discussed.

#### Corporate Affairs

9.5. The need to highlight outcomes not just outputs was noted in respect of this report.

9.6. The recent successful transition to the new IT service provider Northgate was noted.

#### Organisational Development

9.7. There is an overspend on the staffing budget this quarter due to taking on temporary staff to help with notification backlogs.

9.8. The HR self service system was being rolled out.

### **10. Audit Committee**

10.1. There were no issues raised for discussion.

### **11. Any other urgent business**

11.1. Jane May was thanked for her work on Management Board and Audit Committee over the last few years. She had helped the ICO raise its game and had hopefully seen an improvement in ICO performance.