

Information Rights Committee Minutes – 14 June 2011

Members and other attendees present

David Smith	Deputy Commissioner, Director of Data Protection (Chair)
Paul Arnold	Head of Customer Contact
Jonathan Bamford	Head of Strategic Liaison
Lesley Bett	Head of Internal Compliance
Simon Entwisle	Director of Operations
Susan Fox	Director of Corporate Affairs
Andrew Laing	Head of Complaint Resolution
Robert Parker	Communications Planning Manager
Sally-Anne Poole	Acting Head of Enforcement
Graham Smith	Deputy Commissioner, Director of Freedom of Information
Steve Wood	Head of Policy Delivery
Emma Butler	Senior policy officer (International) (Item 3)
Katie Johnson	External Relations Officer (Item 5)
Jonathan Kay	Corporate Governance Officer (Secretariat)

1. Introductions and apologies

- 1.1. There were apologies from Ken Macdonald and Louise Webb.
- 1.2. The Information Rights Committee (IRC) welcomed Katie Johnson, Robert Parker, and Emma Butler.

2. Minutes, action points and matters arising from the last meeting

- 2.1. The minutes of the last meeting were agreed.
- 2.2. IRC considered the outstanding action points and matters arising from previous meetings.

- 2.3. Jonathan Bamford noted that the education project was awaiting the model contract being redrafted.
- 2.4. Lesley Bett would bring a paper on proactive publication of ICO casework statistics to the July IRC meeting.
- 2.5. It was noted that the technical issues forum had been established and was holding its first meeting at the same time as the IRC.

Action point 1 – Secretariat to arrange for the minutes to be added to the ICO website and staff to be advised.

3. Key information rights developments

Report on international activities - January to June 2011

- 3.1. Emma Butler introduced a report on international work. This was to be the first such report, and there would be a follow-up in December.
- 3.2. An indication of priority or risk potential in issues that crossed national boundaries, such as Sony and Apple, would be helpful in future reports. It was also noted that other data protection authorities had their own powers and restrictions that would affect the level of participation and communication possible when dealing with such issues, but that there was clearly a benefit from improved communications and coordination with fellow-regulators.
- 3.3. Some key developments expected in the near future included a text for the revision of the EU directive which was expected in October, and the possibility of movement in the infraction proceedings against the UK. There are also the Article 29 opinion on consent, the ongoing Sony and Apple cases and EU Passenger Name Record directive issues.
- 3.4. Emma Butler was thanked for what was a very useful summary of international activity. IRC discussed future reporting of international issues and agreed that it should receive such reports regularly, and that these should also highlight the work which the ICO is unable to undertake because of resource limitations.
- 3.5. IRC recognised the scope to coordinate its own work in respect of the ICO with planning for the Article 29 Working Party.
- 3.6. It was noted that the International Freedom of Information and Data Protection Commissioners' conferences will be taking place in October and November.

Action point 2: Members to consider the annual work plan and to suggest amendments which will help coordinate the IRC work with Article 29 meetings and international developments.

Action point 3: Susan Fox to consider availability of the International report on ICON.

Updates from business areas

- 3.7. David Smith invited members to provide a brief update on key developments within their business areas.

Complaint Resolution

- 3.8. Andy Laing met with staff at the Parliamentary and Health Service Ombudsman. This precedent could be used to build similar relationships with other ombudsmen.

Customer Contact

- 3.9. There had been lower than expected receipts in the last quarter, probably due to bank holidays. The holidays had also reduced the ICO's ability to deal with cases.
- 3.10. The replacement for the DUIS system has received initial ET approval.

Regional Offices

- 3.11. There had been more than 130 attendees at the recent Data Sharing Code launch in Wales. There had been very good feedback.
- 3.12. The Cardiff office would be moving to new premises as of 30 June.

Internal Compliance

- 3.13. 100 requests for information had been received in May. Performance statistics for the ICO's information request handling have been included in the annual report. IRC noted that these would be a performance standard against which the ICO would be measured.
- 3.14. IRC discussed sections 31 and 59 of the Data Protection Act and their impact on requests to the ICO for information about complaints.
- 3.15. Policy Delivery is producing further guidance on the legitimate interest balancing provision. Once this has been drafted there will be a further discussion.
- 3.16. Statistics on casework are a popular topic of requests. Requestors include Public Authorities, journalists, competitors and complainants looking for context to their own disputes.
- 3.17. Work on making the notification register available in a machine-readable format continues.

Action point 4: Steve Wood to liaise with Lesley Bett regarding the following up of contacts at The National Archives.

Strategic Liaison

- 3.18. Concerns have been raised about unencrypted memory sticks being provided to healthcare professionals by pharmaceutical representatives. This will be pursued.
- 3.19. A recent Supreme Court judgement had addressed the retention of DNA profiles.
- 3.20. The Governments' Independent Advisor on Criminality will launch phase two of her report soon which will cover the retention of data by the police.
- 3.21. IRC thanked the PECR changes group for the clear messages in terms of enforcement and cookies and the ICO's own website compliance. This had paid dividends and shown that compliance was possible.
- 3.22. The ICO will be contacting Facebook over use of facial recognition software.

Corporate Affairs

- 3.23. The ICO annual report will be launched by a webcast. It will not be live, but there will be an online facility for questions and answers.
- 3.24. The website was compliant for cookies on time, and although there have been complaints on aesthetic grounds, no better solution has yet emerged. There have been requests for further information and the source code. Unfortunately the removal of cookies has reduced the ICO's ability to monitor use of the site.
- 3.25. IRC noted that private sector organisations and law firms were investigating opportunities for 'cookie counting'.

Enforcement

- 3.26. The TMobile prosecution had been successful, with proceeds of crime recovery orders. The ICO should receive £13k to spend on prevention and detection of crime.
- 3.27. The sentencing judge commented on the inadequacy of sentencing powers and ICO has asked for a transcript of judgement.
- 3.28. The ACS Law enforcement was now complete.

Policy Delivery

- 3.29. A forthcoming decision notice will address the definition of personal data in the context of IP addresses.
- 3.30. Work on complaints files and personal data is nearly complete and should help clarify some ICO casework. The Department of Health court decision noted at the last IRC meeting was published last week.

Good Practice

- 3.31. A new audit team has been recruited and there is a full plan of audits for the months ahead.

- 3.32. At the recent code launch in Wales there was interest in specific-issue rather than general audits. This had been under consideration for targeted risk-based audits.

4. Strategic and priority issues

Priority Area reports

- 4.1. There were no updates from the Information Rights Priority Area Groups, although several would be brought to the July meeting

Action Point 5: Priority Area Group chairs to ensure that reports are brought.

'Which' report on ICO and finance sector complaints

- 4.2. Susan Fox introduced a discussion of the recent Which? Magazine report on data protection failings by banks. This was based on statistics from the ICO provided in response to an FOI request.
- 4.3. It was recognised that the ICO could make more use of its own statistics and case studies to highlight compliance issues. the ICO had already been working towards such statistical analysis and there was a role for the Information Rights Priority Groups.
- 4.4. A paper on the publication of casework statistics will come to the next meeting and Information Rights Priority Area Groups will be provided with information relevant to their areas. Further information can be provided on request.

5. ICO Speaking Engagements

- 5.1. IRC welcomed Katie Johnson to discuss the ICO speaking engagements policy.
- 5.2. It was noted that there was no shortage of appropriate speakers within the ICO, but staff could not always be released.
- 5.3. The difficulties in managing the relationship with organisers after the initial agreement to speak was noted and it was essential for staff to liaise effectively with Katie Johnson.

Action point 6: All members to remind staff speaking on public platforms of Katie Johnson's role and the need to liaise effectively.

6. Guidance

- 6.1. Steve Wood introduced a summary work plan for the new approach to ICO guidance.
- 6.2. Work has begun on a guide to Freedom of Information to parallel the Data Protection Guide, and to establish an integrated Information Rights knowledgebase.

- 6.3. Regular meetings of the project group are scheduled to enable monthly updates to IRC. Information will also be available on ICON for staff along with a form to request guidance. Proformas will record what guidance is being produced and why.
- 6.4. IRC welcomed the progress, and suggested the programme dovetail with Information Rights Priority Area Groups through a standing agenda item.

7. Consultations update

- 7.1. IRC noted the summary of recent consultation activity.
- 7.2. The ICO's public consultation exercise on the Information Rights Strategy is now underway.

8. Any other urgent business

- 8.1. David Smith noted provisional plans for an information rights messages workshop to help develop key information rights messages.
- 8.2. Steve Wood noted an approach for non-financial support for an ESRC-funded research project on the use of Privacy Impact Assessment in the public and private sectors. Steve would offer non-financial support and keep IRC appraised.
- 8.3. Members noted that this was the last Information Rights Committee meeting for Susan Fox, and thanked her for her valuable contribution to the committee and its predecessor. IRC wished her the best for the future.

9. Next Meeting

- 9.1. 19 July 2011, 10.30am, Room M5&6 Papers to secretariat by 12.00pm Tuesday 12 July.

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