Item 1: Extracts from a paper sent by email from the ICO to DSIT

From: Louise Byers <Louise.Byers@ico.org.uk>
Sent: Monday, September 25, 2023 12:08 PM
To: Section 40(2) [redacted]@dsit.gov.uk>; [redacted]@dsit.gov.uk>
Cc: Angela Donaldson <Angela.Donaldson@ico.org.uk>; Jen Green <Jen.Green@ico.org.uk>; Kevin Schofield <Kevin.Schofield@ico.org.uk>
Subject: Quantum Paper

Quantum advice draft paper

Executive Summary

With regards to the fee model itself, the ICO recognises the need to minimise the cost burden on business, particularly in the current economic climate, and would support a fee structure that would limit the impact of this additional funding on those already paying the fee, while ensuring equity and a 'fair playing field' by giving the ICO the tools to ensure all those that should pay the fee do so.

Background and Information

Since 2020, the ICO's fee income has been significantly negatively impacted due to the economic conditions, to which the fee model is susceptible. With this impact on income coming so soon after the introduction of DPA18, this has slowed the ICO's progress in building the necessary capacity and capability to fully embed and deliver the demands from the DPA18. The ICO is also forecasting to use £9 million of reserves to achieve a balanced budget for 2023/24 in order to commence preparation for the DPDI Bill implementation and transformation of the ICO to deliver on the ICO25 commitments. This is an unsustainable practice.

With the economic conditions expected to continue to impact fee income, retaining the current funding model (i.e. no increases to current fees) would generate a total £76.1m quantum by 2026/27. Section 36 [redacted]

Had the current fee model not been impacted by the economic downturn, the ICO would have expected to generate a total £99.2m quantum by 2026/27 which would have fully funded the changes the ICO needs to make with no changes to the fee model being required. Section 36 [redacted]

Item 2: Extracts from an email sent from the ICO to DSIT

From: Angela Donaldson <Angela.Donaldson@ico.org.uk>
Sent: Tuesday, October 3, 2023 5:00 PM
To: Section 40(2) [redacted] @dsit.gov.uk>; Section 40(2) [redacted] @dsit.gov.uk>; Section 40(2) [redacted] @dsit.gov.uk>; Section 40(2) [redacted] @dsit.gov.uk>
Cc: Louise Byers <Louise.Byers@ico.org.uk>; Tom Reynolds <Tom.Reynolds@ico.org.uk>
Subject: RE: ICO/DSIT Fee Review - In Case Needed

One final topic we discussed on the Quantum paper was the "do nothing" £76.1m described as follows in our latest paper:

"With the economic conditions expected to continue to impact fee income, retaining the current funding model (i.e. no increases to current fees) would generate a total £76.1m quantum by 2026/27. Section 36 [redacted]

Perhaps the simplest way forward is to update the paragraph in the paper to note the below change in red:

"With the economic conditions expected to continue to impact fee income, retaining the current funding model (i.e. no increases to current fees) would generate a maximum total £76.1m quantum by 2026/27. Section 36 [redacted]

Item 3: Extracts from an email sent from DSIT to the ICO

From: Section 40(2) [redacted] @dsit.gov.uk>
Sent: Wednesday, January 17, 2024 2:12 PM
To: Louise Byers <Louise.Byers@ico.org.uk>; Angela Donaldson <Angela.Donaldson@ico.org.uk>; Jo Pedder <Jo.Pedder@ico.org.uk>; Tom Reynolds <Tom.Reynolds@ico.org.uk>; Kevin Schofield <Kevin.Schofield@ico.org.uk>; Ruth Waterston <Ruth.Waterston@ico.org.uk>
Cc: Section 40(2) [redacted] @dsit.gov.uk>; Section 40(2) [redacted] @dsit.gov.uk>; Section 40(2) [redacted] @dsit.gov.uk>; Section 40(2) [redacted] @dsit.gov.uk>; Section 40(2) [redacted] @dsit.gov.uk>; Section 40(2) [redacted] @dsit.gov.uk>; Section 40(2) [redacted] @dsit.gov.uk>
Subject: Data protection fee review: next steps

Approach to the next sub (options): We are aiming to put advice up next week to seek agreement on the approach to the consultation. In order to expedite the process, we have discounted the options which looked at amending the 3 tier structure discussed previously and have modelled a new set of options which consider various ways to increase the fees within the current 3 tier structure so that: a) Section 36 [redacted] and b) we satisfy SoS' steers to reduce burdens on small organisations as far as possible, while not significantly increasing fees for larger ones. We will be recommending to consult on the basis of increasing fees across the board in line with RPI, but we have prepared 3 other options for her consideration primarily to sight her on potential landing zones post consultation (if eg we get strong pushback against increasing fees for micros), but offering the option to consult on these explicitly if she was minded to do so.

In addition to this, we will also set out other areas to be covered in the consultation, namely: a) removing the direct debit discount; and b) exemptions – as previously discussed, our intention is to consult on the basis that the current exemptions continue to be appropriate so we will not be proposing any changes. We previously discussed other areas that could be included in the consultation such as requiring all controllers to pay fees at the same time (eg start of the financial year); requiring controllers to register with the ICO regardless of whether or not they have to pay a fee and offering controllers the option to pay multi-year fees in advance. If you think it would be worth covering any of these in the consultation, please let us know. Ideally, we'd like to keep the consultation as light as possible to ensure we can move quickly with implementation, but very happy to discuss!

Item 4: Extracts from an email sent from the ICO to DSIT

From: Angela Donaldson
Sent: Thursday, February 22, 2024 5:48 PM
To: Section 40(2) [redacted]@dsit.gov.uk>; Louise Byers <Louise.Byers@ico.org.uk>; Jo Pedder <Jo.Pedder@ico.org.uk>; Tom Reynolds <Tom.Reynolds@ico.org.uk>
Cc: Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>
Subject: RE: For review and comment by Friday at noon: draft fee review consultation document

1. Changes we want to see:

Page 12, Point 23 – to remove the monetary increment reference to the impact on ICO's Income entirely and replace with "....proposal is expected to ensure that the ICO's real term funding is maintained more in line with inflationary measures". This keeps the language in line with the rest of the document.

Page 13, Point 24 – We suggest additional reasons for removing the DDD. DD is the easiest way to pay as once set up, there's nothing else to do. This reduces the chance of receiving a fine for late or failed payments. This could be an area we provide our response to publicly in support of this though if you don't want to include in the consultation itself.

Item 5: Extract from an email sent from the ICO to DSIT

From: Louise Byers
Sent: Thursday, February 26, 2024 2:09 PM
To: Section 40(2) [redacted]@dsit.gov.uk; [redacted]@dsit.gov.uk>
Cc: Angela Donaldson <Angela.Donaldson@ico.org.uk>; Tom Reynolds <Tom.Reynolds@ico.org.uk>

Subject: Paul/Jenny Meeting

You might be aware that Paul had a meeting today with Jenny Hall, in which I believe they talked about a letter that is being drafted to follow up the meeting between Emran and Paul/John earlier this month. As you would expect, this covers the need to take forward the fee review quickly, given the scale of the gap next financial year, and therefore whether we can revisit the RPI discussion.

Item 6: Extracts from a letter for Emran Mian from Paul Arnold and John Edwards, sent by email from the ICO to DSIT

From: Section 31 [redacted]@ico.org.uk>
Sent: Thursday, February 29, 2024 11:17 AM
To: dtg.dg@dsit.gov.uk
Cc: Jenny.hall@dsit.gov.uk; Section 31 [redacted]@ico.org.uk>; Section 31 [redacted]@ico.org.uk>

Subject: Emran Mian- Funding Model letter

Further to our meeting on Friday 9 February, the Commissioner and I committed to clarify the ICO's position regarding the financial risks caused by the anticipated seven month delay to implement the review of the data protection funding model ('the model').

We understand that since our meeting, the Secretary of State has now indicated her support for a public consultation to favour a common 29.9% inflation driven uplift to all three tiers of the model, and for the removal of the direct debit discount. We therefore trust and hope that the below further background and clarification will enable both our organisations to jointly own and mitigate the associated risks we continue to share.
Exploring implementation scenarios and financial risks.

Assuming the implementation date of the model is October 2024, we expect this to lead to a [redacted] shortfall in the performance of the model against the agreed target for 2024/25 of [redacted]. This shortfall assumes that the ICO achieves our year 1 target to increase the number of fee-paying organisations by [redacted], but DSIT is unable to implement the increase to the fee itself until October 2024.

Based on this shortfall in performance of the model, and the ICO's planned investment in transformation and DPDI Bill preparation as set out in our detailed submissions to DSIT officials this past year, an October 2024 implementation would then lead to a net [redacted] ICO budget deficit for 2024/25. We have set out further background and context to this position in the appendix.

Clearly, mitigation of this risk will best be achieved by our teams working closely together to try to bring forward the date of implementation of the revised model from October 2024. For example, if a June 2024 implementation can be achieved, the shortfall in performance of the model and the associated budget deficit would be removed.

Our teams are currently exploring the 'as is' scenario where we proceed based on the terms of the proposed consultation as presently drafted. We would however like to ensure that we have also fully explored the provision in s110 of the Digital Economy Act (DEA) enabling the data protection fee to be increased in line with RPI and acknowledging that this would mean not removing the direct debit discount.

In addition to reducing the burden on smaller organisations, we also recognise the need to ensure that fees for larger organisations are proportionate. The proposed compound RPI approach would still result in fees that represent a comparative low-cost burden compared to other regulatory regimes.

Appendix - Background and context.

In 2023/24 the ICO has a stretch target to generate [redacted] of data protection fee income from the current funding model.

Historic performance of the current funding model.

When we met you rightly pointed out that were all organisations in the UK required to pay the present data protection fee doing so, then the model would be generating close to the recently agreed quantum. The ICO has provided a considerable amount of information to DSIT officials in recent years, particularly since 2020 and the significant negative impact of the

Covid pandemic on the performance of the model. If further specific information would be helpful, then we of course stand ready to provide it.

The following are however some key points we would highlight by way of immediate reassurance:

Since December 2016 the number of organisations paying the data protection fee has increased from 457,846 to 1,184,459. Whilst there remain a large number of organisations still not paying a data protection fee, the vast majority of these are the smallest businesses in the UK. There is no definitive number of organisations known to be required to pay the data protection fee. There are a number of exemptions organisations are able to claim based on the purpose for which they are processing personal information.

Claiming these exemptions is also a passive process and it is for the ICO to demonstrate that organisations found not to be paying the fee are in fact required to do so.

Identifying each of these businesses without access to HMRC data, and then determining whether they are able to claim one of the many exemptions from the fee, is a time consuming and increasingly disproportionately costly exercise given the low value of each fee being collected.

With a large proportion of fee payers paying their fee in the latter half of the year, and the particularly acute economic uncertainty faced by small businesses across the UK for the past number of years, the funding model (and thus ICO annual income) has become increasingly difficult to forecast.

In 2020 we subjected our collection of the data protection fee to an independent external audit. This audit returned a 'substantial' assurance rating. In addition, we continue to work to automate and drive-up levels of self service across our income collection processes. Some of our planned future investment in improved DDaT infrastructure and tooling is specifically targeted at this area.

We also work continuously to identify further reliable data sources to help us to identify those not paying the fee.

Demonstrating why small businesses would pay less under a full application of compound RPI.

If based on a calculation of compound RPI since 2018, data protection fees would increase by 34.6% rather than 29.9%. This scenario therefore increases fees across all three tiers by an additional 4.7% compared to the approach set out in the draft consultation.

By retaining the £5 direct debit discount all those paying the lowest fee at tier 1 would then benefit from a 9% discount and those businesses paying the tier 2 fee would receive a 6% discount, resulting in a net reduction to the fee under this scenario compared to that currently being proposed.

Item 7: Extracts from a draft response letter from Emran Mian to John Edwards, sent by email from DSIT to the ICO

From: DTG DG Office <dtg.dg@dsit.gov.uk>
Sent: Friday, March 15, 2024 1:54 PM
To: John Edwards <John.Edwards@ico.org.uk>; Section 31 [redacted]@ico.org.uk>
Cc: Hall, Jenny (DSIT) <Jenny.hall@dsit.gov.uk>
Subject: ICO Funding Model letter (draft)

Financial risks and mitigation

In our meeting of 9 February, we discussed the importance of DSIT fully understanding the position in relation to the ICO's finances, including the impact of an October implementation of changes to the data protection fee regime and the options available. Understanding this will put DSIT in a position to work with the ICO to determine what actions could be taken to mitigate the identified financial risks.

In the meeting, it was mentioned that there were choice s on how the ICO could transition to the new mode l post the implementation of the DPDI Bill, and that these choices could be used to help manage financial pressures. However, there are no references to these options in your letter.

Historic performance of the fee model

Whilst noting the difficulties in collecting fees, I was pleased to note the positive steps taken to improve fee collection rates this year.

Item 8: Extracts from a letter from John Edwards to Emran Mian, sent by email from the ICO to DSIT

From: Section 31 [redacted]@ico.org.uk>
Sent: Wednesday, March 27, 2024 10:24 AM
To: DTG DG Office <dtg.dg@dsit.gov.uk>
Cc: Hall, Jenny (DSIT) <Jenny.hall@dsit.gov.uk>; Section 31 [redacted]@ico.org.uk>
Subject: 20240327_ICO/O/JE/L/RTL/0692 - Letter from the Information Commissioner

Section 36 [redacted]

As part of these arrangements the ICO has been asked to grow the number of data protection fee payers by [redacted] in each of these years. As the ICO commits to honour this obligation, including mitigating the risk of failing to achieve such a stretching target, my primary expectation is that DSIT will take responsibility for honouring any shortfall in the 2024/25 performance of the model against the agreed [redacted] target caused by the implementation delay.

Item 9: Extract from an email sent from the ICO to DSIT

From: Louise Byers <Louise.Byers@ico.org.uk>
Sent: Tuesday, April 30, 2024 1:21 PM
To: Section 40(2) [redacted] @dsit.gov.uk>; Tom Reynolds <Tom.Reynolds@ico.org.uk>; Angela Donaldson <Angela.Donaldson@ico.org.uk>
Cc: Section 40(2) [redacted] @dsit.gov.uk>
Subject: RE: Final thoughts!

c. Page 10 para 2 – The consultation says 'Its [ICO's] statutory responsibilities in relation to data protection are funded through the data protection fee, which accounts for the majority of the ICO's funding overall. This is supplemented by grant-in-aid from the government to fund the ICO's regulation of other laws outside of data protection.' This is not quite correct, and we would like it to make clear that our PECR work is also funded from DP fees.

Sure we will add.

Item 10: Extract from an email sent from DSIT to the ICO

From: Section 40(2) [redacted]@dsit.gov.uk>
Sent: Thursday, June 20, 2024 3:55 PM
To: Louise Byers <Louise.Byers@ico.org.uk>; Angela Donaldson <Angela.Donaldson@ico.org.uk>; Tom Reynolds <Tom.Reynolds@ico.org.uk>
Cc: Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>
Subject: Fee review: next steps and actions

While we did not manage to publish the fees consultation before the election was called, this remains a top priority and we'll be putting week one advice to new Ministers which will cover: a) the approach to managing the 24/25 shortfall and b) options to progress the fees consultation. On the former, the focus will be on steps the ICO and DSIT are and will jointly be taking to manage the funding shortfall for the current year in the absence of an immediate mechanism to increase the fees, while on the latter we will recommend progressing the fee consultation as soon as possible.

Item 11: Extracts from emails exchanged between the ICO and DSIT

From: Louise Byers <Louise.Byers@ico.org.uk>
Sent: Wednesday, July 24, 2024 1:30 PM
To: Section 40(2) [redacted]@dsit.gov.uk>
Cc: Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>; Tom Reynolds <Tom.Reynolds@ico.org.uk>; Angela Donaldson <Angela.Donaldson@ico.org.uk>
Subject: RE: The fee review consultation

1. The draft consultation doesn't specifically call out the increase as being inflation based. I assume that this is not necessary for the increase to be agreed through the negative resolution process as set out for RPI linked increases? Which period would the proposed increase of 37.2% equate to in terms of an RPI linked increase?

Thanks Louise. We have now referred in the consultation document to "inflationary pressures" since 2018 in point 10 of the consultation (pages 13-14). Legal have reviewed this and are content with this approach, so that a negative procedure would be open to us (subject to SoS's agreement).

From: Section 40(2) [redacted]@dsit.gov.uk>
Sent: Friday, July 19, 2024 1:48 PM
To: Louise Byers <Louise.Byers@ico.org.uk>
Cc: Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>; Section 40(2) [redacted]@dsit.gov.uk>
Subject: The fee review consultation

We're now re-drafting the consultation. To ensure it can move forward as fast as possible we're proposing:

- Retaining the £5 direct debit discount: Within the last consultation, we had proposed to remove this. However, we think that retaining the direct debit discount will simplify the consultation and also continue to incentivise data controller's (especially in tier 1) to continue paying the fees.
- Retaining the current exemptions from paying the charges: No change from the previous consultation.

Item 12: Text from an email sent from the ICO to DSIT (original email, date and recipient address not retained)

Email to Section 40(2) [redacted]

Hi [redacted]

Please see below some further information we hope helps to clarify your points. Apologies this wasn't able to be provided on Thursday last week. Whilst producing the narrative at pace is fine, we wanted to make sure the financials were fully validated Section 40(2) [redacted]

Before responding to your specific points, we just want to further highlight that what we are focused on here is a review of the ICO's funding model. The ICO and DCMS, and now DSIT, hopefully have a shared understanding of the circumstances in which the current model was introduced, This was to enable the ICO's income to grow over time such that the organisation be able to develop the necessary infrastructure, capacity and capability to operate effectively as an economic regulator in line with the objectives of the DPA18. This purpose has then recently been extended to include the need for the funding model to absorb the new statutory objectives in the ICO's future DPDI remit.

Unfortunately, the funding model has significantly under performed for each of the past three years due to being disproportionately impacted by the economic downturn, with this trend set to continue. It is important to be clear that we are not suggesting that our funding model should not need to absorb fluctuations in the economy and it did this successfully for 20 years up to 2020. However, the specific nature of the downturn since 2020, impacting as it has so acutely on small businesses, means that the impact on the ICO's funding model has been disproportionate.

Whilst we recognise and respect the fact that Ministers need to approve the detail of the review, we would hope that this will be done in a way which recognises the objectives of the current funding model, the disproportionate impact of the recent economic downturn as well as the requests being made by Ministers of the Commissioner, and by extension the ICO, and the realistic level of funding needed to meet these expectations.

The recent suggestion that this review may result in an effective freeze of the ICO's current funding has introduced a significant and new financial risk for the ICO to manage and mitigate, adding to the uncertainty and instability the funding model review itself is intended to address.

We trust the below information helps to clarify our note from last week, but please do say if a call would be helpful too.

Forecasts

The figures provided in the ICO's most recent Funding and Fees paper are income projections and should be read alongside the expenditure projections I sent last month in my earlier paper. For example, the £102.7m is an income projection through to 2026/27 whereas the £100.5m is our expenditure projection through to the same period.

We have pulled this information together and summarised it in the table and graph below, which show that our DP expenditure plans match the projected DP fee income forecasted from the current model had there not been an economic downturn with subsequent disproportionate impact on fee income since 2020/21.

With regards to compliance, we appreciate that there will be challenges with maintaining acquisition rates once we reach near saturation. However, there is still significant under representation in the current model with just 31% of those required to pay the fee doing so. Our wish to explore new data sources is intended to make our follow up of these remaining organisations more efficient and cost effective. We are however some considerable way away from reaching saturation point or an effective 'brick wall'.

It is the ICO's position that pursuing these organisations would be preferable to a new funding model which effectively freezes our income at 22/23 levels or limits it to a level that's unable to sustain the infrastructure, capacity and capability needed to meet current and planned future statutory objectives.

The ICO does however recognise that the current funding model's ultimate capacity to generate £171.4m of fee income p/a is excessive given the ICO's objectives for the coming years. WE do therefore support a proportionate cut/reduction to the capacity of our funding model, so long as the model remains able to enable the ICO to meet its present and future statutory objectives.

The table and graph below show from 2018/19 to 2026/27:

1) Total expenditure trends. This shows the increase in expenditure from the implementation of GDPR and the current funding model through to what we believe we need to complete our development

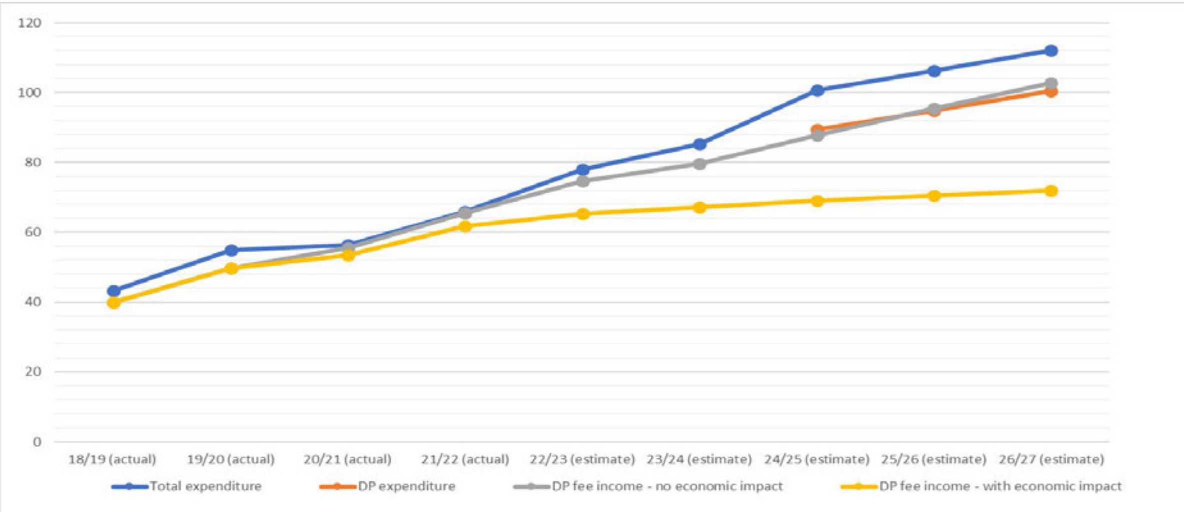
into an economic regulator and to deliver the ambitions of ICO25 and the DPDI Bill.

2) DP expenditure trends. This shows the projected level of DP expenditure during the same period.

3) DP Fee income – no economic downturn impact. This sets out the forecast of income if we had not been disproportionately impacted by the economic downturn.

4) DP Fee income – including economic downturn impact. This sets out the forecast of income if we continue to be disproportionately impacted by the economic downturn. This would mean our renewal rate would remain at 89% and acquisitions would remain at 180,000 per annum.

   The graph and table show that there is minimal difference between the amount of DP fee income we expected the model to produce if there had been no economic downturn, and that required to fund the work of the ICO.



	18/19 (act.)	19/20 (act.)	20/21 (act.)	21/22 (act.)	22/23 (est.)	23/24 (est.)	24/25 (est.)	25/26 (est.)	26/27 (est.)
Total expenditure	43.3	54.8	56.4	65.9	78.0	85.3	100.7	106.4	112.2
DP expenditure							89.4	94.9	100.5
DP fee income - no economic impact	40.0	49.7	55.5	65.6	74.7	79.7	87.7	95.4	102.7

DP fee income - with economic impact	40.0	49.7	53.4	61.8	65.3	67.2	69.0	70.6	72.0