

Casework: Outcomes and approaches

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This presentation is to make you aware of the different ways we progress our complaints cases and to get you familiar with the terminology before you begin working on your own cases.

What is an outcome?

The ICO are obligated to facilitate the receiving of complaints from the public. We are also required to provide a response within a certain timeframe.

We investigate complaints to the extent we deem appropriate and provide an **outcome** to the complainant.

An 'outcome' is an explanation of what we have done with the complaint, it can be as simple as confirming that we have made a record of the concerns raised. We are not obligated to resolve issues on behalf of individuals and individuals do not have the right to request that the ICO take any particular action on case.

If we are unable to provide the outcome within 3 months, then we should provide an update to the complainant.

We have information on our webpage about [what to expect from the ICO when making a data protection complaint](#). It is a useful page to refer the public to.

Relevant legislation:

- GDPR Art 57 & Art 77
- DPA Section 165 & Section 166



Insufficient Information

Do we have enough information to consider the case? Do we need more information to understand what the data protection complaint is?

- We generally need to see evidence that the complainant has raised all their data protection concerns with the data controller (DC). Ideally, the complainant will have exhausted the complaints process with the DC and received a final response.
- We might need a letter of authority (LOA) if the complaint has been brought to us by another person (e.g. solicitor/friend/relative).
- Sometimes we need to see evidence of the data breach. For example, if the complaint is about direct marketing, evidence of the marketing can be useful.
- We might decide that we need to ask the DS for an update on what has happened with their complaint since raising their concerns with us.

We can ask for the information we need then close these cases with an outcome of 'Insufficient Information' until we receive the information we require. Once we receive the information, we can reopen the case.



If we ask for more info and close the case, we don't need to give them a timeframe for response. If they don't respond then the case stays closed.

Further evidence from the DC

In some cases, we will require further information from a DC before forming our opinion on the case. This is termed 'further evidence' due to the process on ICE360.

We might choose to ask the DC for further evidence if we think that the DC can provide additional clarity on a case.

We might do this when we:

- want to better understand how a DC has handled the data protection concern.
- need to ask for relevant policies and procedures, or an explanation of processing.
- request unredacted disclosures.
- think the explanation of the issues would be clearer from the DC.

GDPR Art 31 requires DCs to cooperate with the regulator so we would expect a prompt and full response.

It is recommended that you always give the DC a reasonable timeframe for response, stipulating in your request for information when you expect to receive their response.



Include a timeframe for response. Our outcome obligation is to the DS, not the DC, so if we ask the DC to respond then we need that response promptly so we can provide our outcome within the legal timeframe.

ART 31 requires DCs to comply with the regulator.

Not Data Protection

Do the concerns raised relate to data protection matters?

We do receive complaints about matters that don't fall within our remit.
Most commonly, these are:

- Complaints relating to fraud.
- Service complaints about an organisation.
- Complaints where an individual has requested copies of information that doesn't constitute personal data.

We can provide an outcome on these cases without exploring the matter further, explaining why the matter isn't within our remit. We might choose to signpost the complainant, if appropriate, to an organisation that might be able to assist them further.

These cases can be closed once you have provided your outcome.



- Fraud: We can refer to Action fraud
- Service complaints: recommend they go back to the org or to the appropriate regulator/ombudsman.
- Not their data: Such as info relating to a car they have purchased or their house (e.g. plans from when the house was built).

Has the DC complied?

Once we have identified that:

- we have enough supporting information
- the complaint does relate to data protection

We need to look at the details of the communication between DS and DC.

When reading a case, we will look at the concerns raised and look out for any infringements. We should also consider whether the DC is meeting our expectations and if we are satisfied with the way in which the DC has responded to the data protection complainant.

Complied

If we are satisfied that the DC has complied with its obligations under data protection law, then we can provide an outcome to the complainant explaining this.

Most often, we will just provide the outcome response to the complainant. In some circumstances, we might write to the DC too if we think it is appropriate. We might do this if we think that:

- there is still an opportunity to improve practice
- the DC will benefit from knowing what our outcome is

Once we have provided our outcome we can close the case.



E.g.

1. You might write to the DC and make them aware of the complaint if there has been some ongoing wider issues between DC & DS and the DC would benefit from knowing that we have provided an outcome stating that we are satisfied with the way the DC handled matters.

2. You might write to the DC with recommendations if you spot certain DP elements that might be an issue in the future, or they have an error within their privacy notice.

Not complied

If we decide that it is clear that the DC **has not** complied with its obligations, then we should provide an outcome to the complainant and the DC to explain this.

- We should provide useful good practice advice to the DC and advise next steps if appropriate.
- We should look at the amount and nature of the other complaints we have received for the DC and consider:
 - Are there any trends emerging?
 - Are there any questions you could ask so you can get a clear view of their current processing?

Once we have provided outcomes to the complainant and the DC then we can close the case.

If we choose to ask questions to the DC, we should keep the case open until we have been provided with the information we have requested. We do not need to keep the complainant informed about the details of our further regulatory enquiries.



If we have recorded an infringement then we must inform the DC, even if the issue is now resolved and there is no further advice we can provide.

Next Steps: eg Respond to the DS within X days

Trends: eg Backlog of SARs

Accountability

GDPR Article 5 (2) states:

"The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability')."

There are two key elements here:

1. The accountability principle makes it clear that organisations are responsible for complying with the other GDPR principles.
2. Organisations must be able to **demonstrate their compliance**

The [Accountability Framework](#) webpage sets out what we expect from organisations.

Accountability

Has the DC demonstrated its compliance?

When reading the correspondence, if we think that the DC

- could have done more to resolve matters
- hasn't done enough to address the issues brought to their attention
- hasn't provided a satisfactory explanation

then we can ask the DC to take steps to do more, addressing the matters directly with the data subject (DS)/complainant.

We don't always need to determine that a DC has complied/not complied. We can simply identify that the DC needs to do more work.

We can provide an outcome to both parties, providing good practice advice to the DC and stipulating some next steps, then close the case. You might hear this being called the Accountability Approach.

We might also choose to provide recommendations and advice to the complainant where appropriate



. Both parties can be guilty of frustrating the complaints process and it is not the role of the ICO to arbitrate between the two until both are satisfied.