

# Management Board minutes

18 September 2023

Details of attendees are provided at the end of the minutes.

## 1. Introductions and apologies

- 1.1. Apologies for absence were received from Emily Keaney, Ranil Boteju and Ange Balakrishnan.
- 1.2. Professor Chris Hodges and Lauren Chadwick were welcomed to the meeting. Introductions took place.

## 2. Declarations of interests

- 2.1. No declarations of interests were made.

## 3. Matters arising from the previous meeting

### Minutes

- 3.1. The minutes of the previous meeting had been approved as a correct record.

### Actions

- 3.2. All actions from previous meetings were either completed or not yet due.

## 4. Discussion items

### 4.1. Regulatory Behavioural Change

- 4.1.1. Professor Chris Hodges joined the meeting to discuss approaches to delivering behavioural change through regulation. Professor Hodges provided a presentation giving an overview of outcome-based collaborative regulation (OBCR), setting out the evidence supporting OBCR, the principles of common purpose, aims, outcomes and trustworthiness underpinning OBCR, and examples of successful applications of OBCR.
- 4.1.2. The Board particularly discussed the following issues:
  - The OBCR principle of working closely with key stakeholders within the regulated community, and the successes of OBCR in these communities. The Board noted the ICO's whole-economy remit meant that the

regulated community was extremely large and discussed the challenges and benefits of building an effective collaborative approach. This may be through a sectoral approach, with the revised approach to public sector enforcement an example of this. The Board also discussed the importance of ensuring that public trust in the use of their data was always a key factor to be considered.

- The benefits of applying the concept of trustworthiness to the regulated community and therefore taking a different regulatory approach to those who are 'bad actors' compared to those who seek to comply with regulations but may fall foul of the rules inadvertently. The Board also discussed areas where there may be tension between compliance and profit maximisation motives for businesses.
- The potential for OBCR to become government policy in regulation, and the opportunities for regulators to deliver through OBCR.

4.1.3. The Board's discussion also touched on how to address trade offs between privacy and growth and the importance of ensuring stakeholders, including the public, are aware of the aims of an outcome-based approach.

4.1.4. The Board thanked Professor Hodges for his presentation.

#### 4.2. **Approach to regulating AI**

4.2.1. Stephen Almond presented a report to facilitate a discussion of the ICO's approach to regulating AI. In presenting the report he provided further information about the existing legislative landscape, including the regulatory remits of other regulators and how to deliver a coherent view of the regulatory approach to AI across regulators.

4.2.2. The Board discussed:

- The importance of the public having clarity on where they could report concerns about the use of AI, with a joined up approach to regulation ensuring that concerns were referred to the right regulator. The Board commented that ideally regardless of where a member of the public reports a concern to, it would also be

referred to the most appropriate regulator. The Board was informed that the ICO had strong relationships with some key AI regulators (such as Ofcom and the CMA) through the Digital Regulation Cooperation Forum and was beginning to build relationships with other regulators who would be important in this space (such as health regulators), to try to achieve this.

Professor Hodges agreed that a collaborative approach would be needed between all of the regulators in this space for regulation to be successful.

- Public and industry perceptions towards AI, particularly in terms of the different perceptions of AI as either a threat or opportunity, noting how these perceptions may vary between different parts of the economy and different countries. The Board commented that it was important that the ICO was involved in the full scope of the discussion, highlighting the potential benefits but warning about the risks, as well as adopting AI in its own work where appropriate.
- AI being seen as a tool within industries, many of which had specific regulators (such as financial services) or had elements within the remit of whole-economy regulators (such as the ICO), and how this may determine the approach to the regulatory framework around use of AI.
- The links between AI and content harms, including responsibility and powers for regulating AI-created content.

4.2.3. The Board agreed that it would be beneficial to bring further discussions on regulation of AI to future Board meetings, as this was a fast evolving and vital area of the ICO's remit.

**ACTION: Stephen Almond to provide the Board with a further report regarding progress with developing approaches to regulation of AI. Due date: 18/3/24**

Professor Chris Hodges left the meeting at this point. The Board thanked Professor Hodges for his attendance.

#### 4.3. **Data Protection Law Reform**

4.3.1. Paul Arnold provided an oral update on progress with data protection law reform and the ICO's preparation to deliver the change required once the Data Protection and Digital Information (DPDI) Bill achieves Royal Assent.

#### 4.4. **Modern Slavery Statement**

4.4.1. Paul Arnold presented a report setting out the ICO's annual modern slavery statement.

4.4.2. The Board noted that responsible agencies had cited concerns about sharing data as part of efforts to prevent and tackle modern slavery.. It was agreed that the office would collaborate with the organisations responsible for overseeing modern slavery prevention to allay these concerns.

**ACTION: John Edwards to work with the organisations responsible for overseeing modern slavery prevention to allay concerns regarding sharing data as a barrier to preventing modern slavery. Due date: 22/1/24**

#### **Decision**

4.4.3. The Board approved the modern slavery statement and also its publication.

**ACTION: Corporate Governance to ensure that the modern slavery statement is published by the end of September. Due date: 30/9/23**

## 5. [Performance reports](#)

### 5.1. **Management Board Scorecard (Q4)**

5.1.1. Paul Arnold presented a report setting out performance over the previous quarter.

5.1.2. The Board's discussion focused on the extent to which the scorecard provided information of productivity levels across the organisation. The Board discussed the challenges in attempting to measure capacity, particularly risks of creating 'perverse incentives' through KPIs, the challenges for the ICO in managing non-discretionary work, and the benefits of identifying avoidable work or process inefficiencies.

**ACTION: Jen Green and Rob Holtom to facilitate further discussion of capacity measures Due date: March 2024**

5.1.3. The Board also discussed the number of Freedom of Information complaints cases over 12 months old, the causes of this, and the recovery plans in place.

## 5.2. **ICO 25**

### **ICO 25 progress update**

5.2.1. Jen Green presented a report setting out progress with delivering the ICO 25 strategy.. The Board noted the report.

### **Digital, Data and Technology (DDaT) infrastructure project review paper**

5.2.2. Rob Holtom presented a report giving the Board information about work to ensure successful delivery of these projects and the lessons learned to date.

5.2.3. The Board welcomed the steps taken to address the concerns raised by the Board at its last meeting.

5.2.4. The Board discussed the future work on skills and culture to continue to support the improvements to processes, and received information about work to foster a supportive and constructive culture to ensure that any concerns were raised as early as possible.

### **Project deep dives – prioritisation framework and Subject Access Request (SAR) tool projects**

5.2.5. Rob Holtom presented a report providing the Board with information on projects for delivery of the prioritisation framework and development of a SAR tool.

5.2.6. The Board welcomed the development of the prioritisation tool, and discussed the degree to which the tool was mandatory for use in different areas of the ICO. The Board discussed the importance of creating a culture of using the prioritisation tool, sharing with staff the successes from using the tool and the problems created when the tool was not used.

5.2.7. The Board was also informed that the Executive Team was confident that they had collective ownership and responsibility for prioritisation.

## 6. [Updates from Committees](#)

### **Regulatory Committee**

- 6.1. John Edwards provided an oral update on matters considered by the Regulatory Committee at its meeting on 7 September. The meeting had focused on the new regulatory action framework, progress with penalty setting guidance, and delivery of the regulatory risk review project. The Committee had also discussed and advised the Commissioner on the current status of Network and Information Systems (NIS) reform, the prioritisation framework, and recent and upcoming regulatory action.

### **Committee membership update**

- 6.2. Nicola Wood presented a report providing an update on the membership of the Board's Committees and the terms of Non-Executive Directors.
- 6.3. The Commissioner thanked the Non-Executive Directors who had agreed to extend their terms.

## **7. Finance**

### **7.1. Latest financial position and July 2023 management accounts**

- 7.1.1. Angela Donaldson presented a report setting out the latest financial position and the July 2023 management accounts. This included further information regarding the use of reserves.

## **8. Any other business**

- 8.1. There were no items of other business.

## **Attendance**

### **Members**

Ailsa Beaton	Non-executive Director
David Cooke	Non-executive Director
Jane McCall	Non-executive Director
Jeannette Lichner	Non-executive Director
John Edwards (Chair)	Information Commissioner
Nicola Wood	Senior Independent Director
Paul Arnold	Deputy CEO and Chief Operating Officer
Stephen Bonner	Deputy Commissioner (Regulatory Supervision)
Tracey Waltho	Non-executive Director

### **Attendees**

Angela Donaldson	Director of Finance (for item 7)
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Claudia Berg  
Jen Green  
Louise Byers  
Rob Holtom

Stephen Almond  
Professor Chris Hodges

**Secretariat**

Christopher Braithwaite  
Lauren Chadwick

General Counsel  
Executive Director, Strategy and Resources  
Director of Risk & Governance  
Executive Director, Digital, Data, Technology  
(DDaT), Transformation and Delivery)  
Executive Director, Regulatory Risk  
Emeritus Professor of Justice Systems,  
University of Oxford (for items 4.1 and 4.2)

Corporate Governance Manager  
Corporate Governance Apprentice