

## **PROTECT**

### **INFORMATION RIGHTS REPORT – Management Board**

**22 April 2013**

1. Cross-Sectoral Work
2. Government and Society sector
3. Public Security sector
4. Public Services sector
5. Business and Industry sector
6. National Regions
7. International
8. Enforcement
9. Customer Contact/Complaints Resolution

#### **1. Cross-Sectoral work**

##### **1.1 FOI Reforms**

There have been no significant developments since January when we reported on the government's response to post-legislative scrutiny. Despite agreement that the time period for bringing a prosecution under section 77 FOIA (deletion, concealment etc of requested information) should be extended, there is no prospect of an amendment in the foreseeable future. This will be brought forward when legislative time allows.

The government's efforts are apparently going into revising the veto policy to make it broader, finding ways of taking more requests outside the statutory cost, so removing the duty to comply. However, no proposals or emerging thinking have yet been shared with the ICO.

Contact: Graham Smith

##### **1.2 Prince of Wales Correspondence**

The Guardian is challenging by way of judicial review the Attorney-General's veto of the Upper Tribunal's order for disclosure of "advocacy correspondence" between HRH The Prince of Wales and government ministers. One important point raised by the case, but not being pursued by the Guardian, is whether the veto can be applied in respect of environmental information which is disclosable under the European Directive on Access to Environmental

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Information, the basis for the UK's Environmental Information Regulations. Given that the proceedings are in train, the ICO is raising this point with a view to obtaining an authoritative ruling from the court which can be followed in future cases. As yet there is no date for a hearing.

Contact: Graham Smith/Mark Thorogood

### **1.3 Freedom of Information – transparency and open data**

Work includes:

The "open data" amendments to FOIA, where new rights have been added in respect of datasets, will now commence in May 2013. The ICO has been involved in a working group set up by the Cabinet Office to develop a new section 45 FOIA Code of Practice to provide guidance on the change. The Code has now been finalised by the Cabinet Office.

Future work:

The ICO will publish supplemental guidance on the FOIA dataset clauses in April 2013.

Contact: Steve Wood/Carl Wiper

### **1.4 Freedom of Information guidance**

Work includes:

At year end the project to review the suite of FOIA guidance has produced 55 pieces of new or revised FOIA guidance. In March significantly revised guidance on the section 35 exemption (covering government policy information) was published. The guidance draws upon ICO and Tribunal decisions, illustrating where information has been disclosed and withheld following the application of the exemption by government departments. The guidance essentially follows the ICO's existing lines on "safe space" and "chilling effect" but introduces a more sophisticated understanding of when these concepts may apply.

Future work:

New guidance on vexatious requests will be issued in April/May 2013, drawing in particular on a recent suite of cases in which the Upper Tribunal has helpfully set out the approach which should be

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taken when applying the law to individual cases under both FOIA and the EIR.

Contact: Steve Wood/Jo Pedder

### **1.5 Good Practice**

In the final quarter the Good Practice team has continued to deliver the audit and advisory visit programme.

Work includes:

- At the end of the final quarter, 58 audits had been completed against the full year target of 55 audits, with 15 more still in progress.
- 78 advisory visits have been completed against the year's target of 55.
- We have completed 35 audit follow ups and additionally four undertaking follow ups.
- Additionally we ran an advisory visit workshop at the ICO which involved participation from nine smaller organisations and received very positive feedback.
- We continue to populate the PECR audit programme; currently all audits arranged have been voluntary.

Future work:

- We have restructured the work of the three groups into sectors; health, criminal justice and local government for the coming year. This will allow us to focus on ICO priority areas while bringing Good Practice more in line with the arrangement in other Departments.
- We are looking to develop and adapt our advisory visit work into sector related projects in order to disseminate good practice by effective and efficient methods, such as workshops, presentations and existing forums within these sectors.
- We are also in the process of developing outcome reports for those sectors where we have completed significant numbers of advisory visits or identified common trends.

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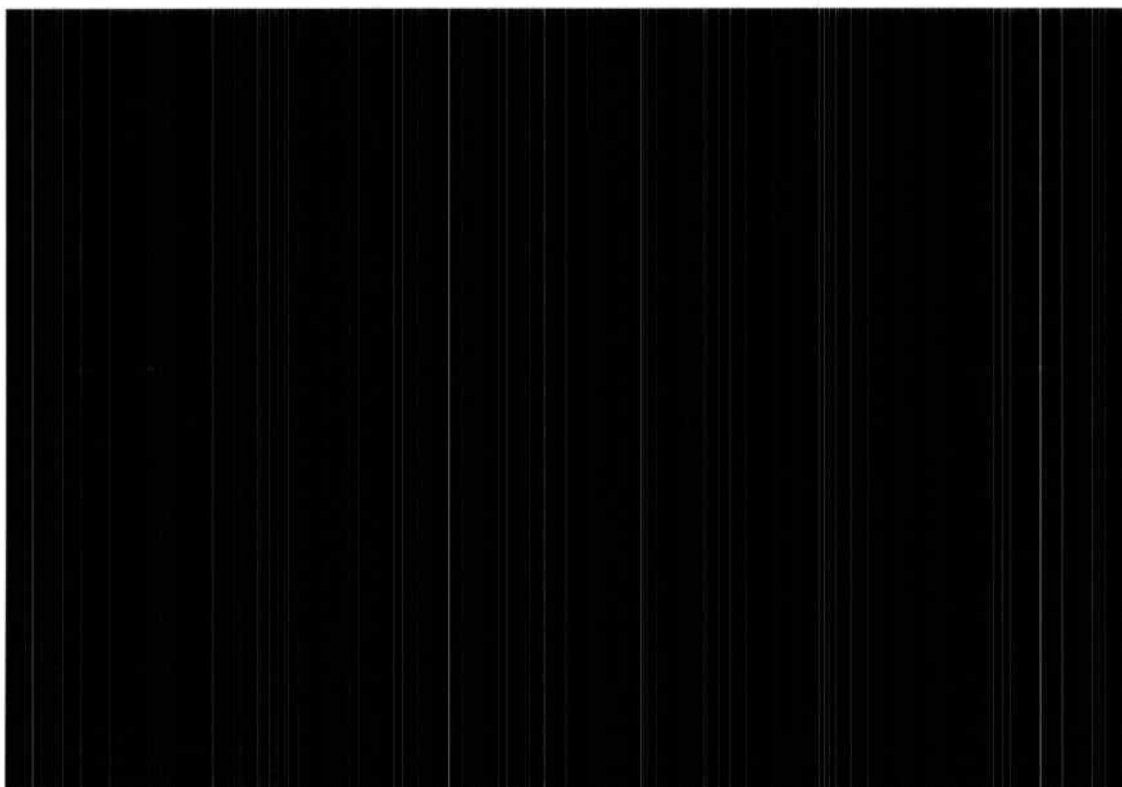
### Outcomes:

- We have updated two of the sector outcomes reports on local government and the private sector. In addition we have published a new outcome report for police/probation trusts.
- We have successfully obtained the decoupling of the case for the extension of Assessment Notice powers for the Department of Health from the case for the Department of Communities and Local Government. The case for the DoH is now out for consultation.
- Following a successful advisory visit to the Samaritans Lewisham, the branch volunteered to participate in a short film about their experience with the ICO.

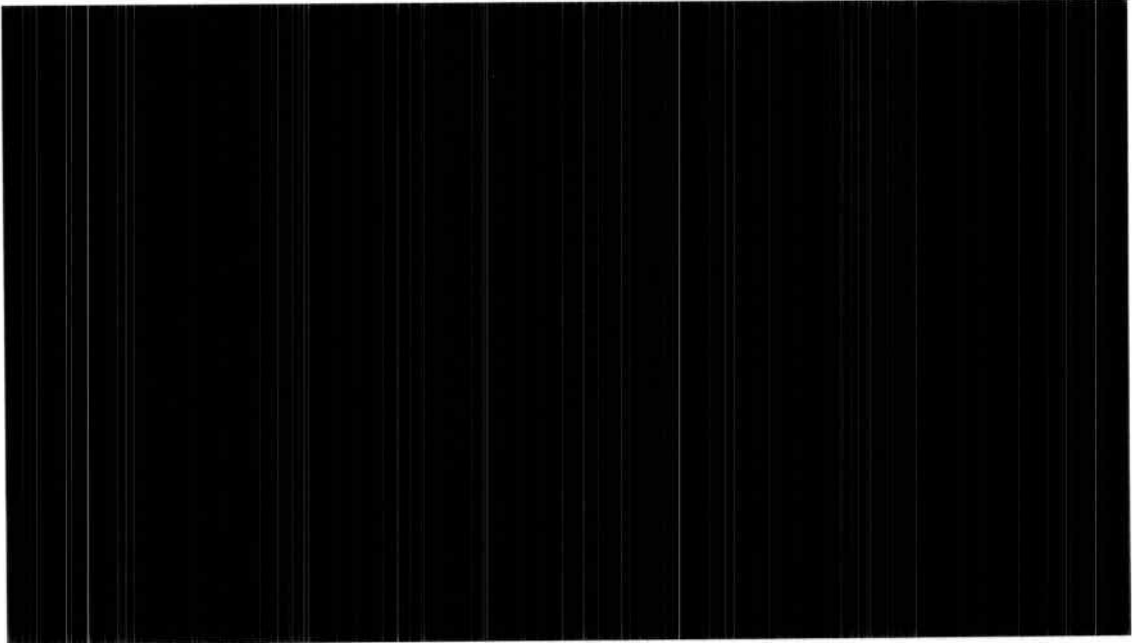
Contact: Vicki Heath

## **2. Government and Society Sector**

### **2.1**

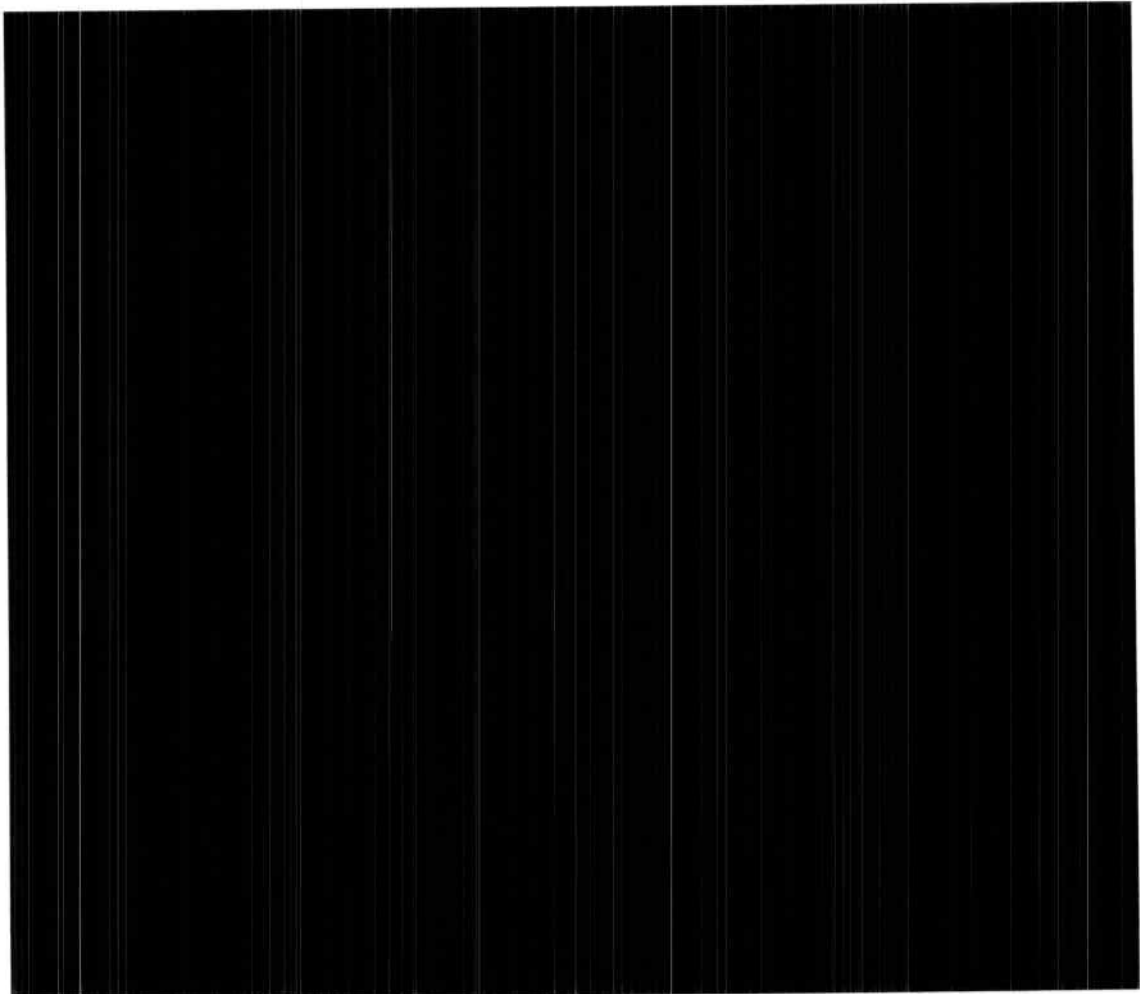


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Contact: Judith Jones

**2.2**



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Contact: Judith Jones, Sue Markey

### **2.3 Leveson Report**

Following the publication of the Leveson report in November 2012, we established a cross office group to take forward future actions as identified in the ICO response to the report. We carried out a 'lessons learned' exercise looking at issues identified in the Leveson Report where we could develop and improve our performance.

#### Outcomes:

Our opinions are known, understood and appreciated by our stakeholders in Government and Parliament and the ICO is ready to respond to any changes in legislation which may arise as a result of the report. All recommendations of significance to the ICO have been considered and where applicable taken forward. Completed actions by the office include the addition of a section to our website dedicated to giving advice to individuals on their information rights vis-à-vis the media; and drafting a media stakeholder engagement plan which was completed by the end of February 2013.

In response to the recommendation of the Leveson Inquiry for the ICO to provide guidance to the press about their obligations under the Data Protection Act the ICO proposed to develop a data protection code of practice. A short consultation about a proposed framework for the Code was run in March. Whilst most press stakeholders were reasonably positive about the ICO producing good practice guidance there was concern about the ICO producing a code that could be seen to compete with the Editors' Code, despite the ICO's indication that they should be complementary.

#### Future Work:

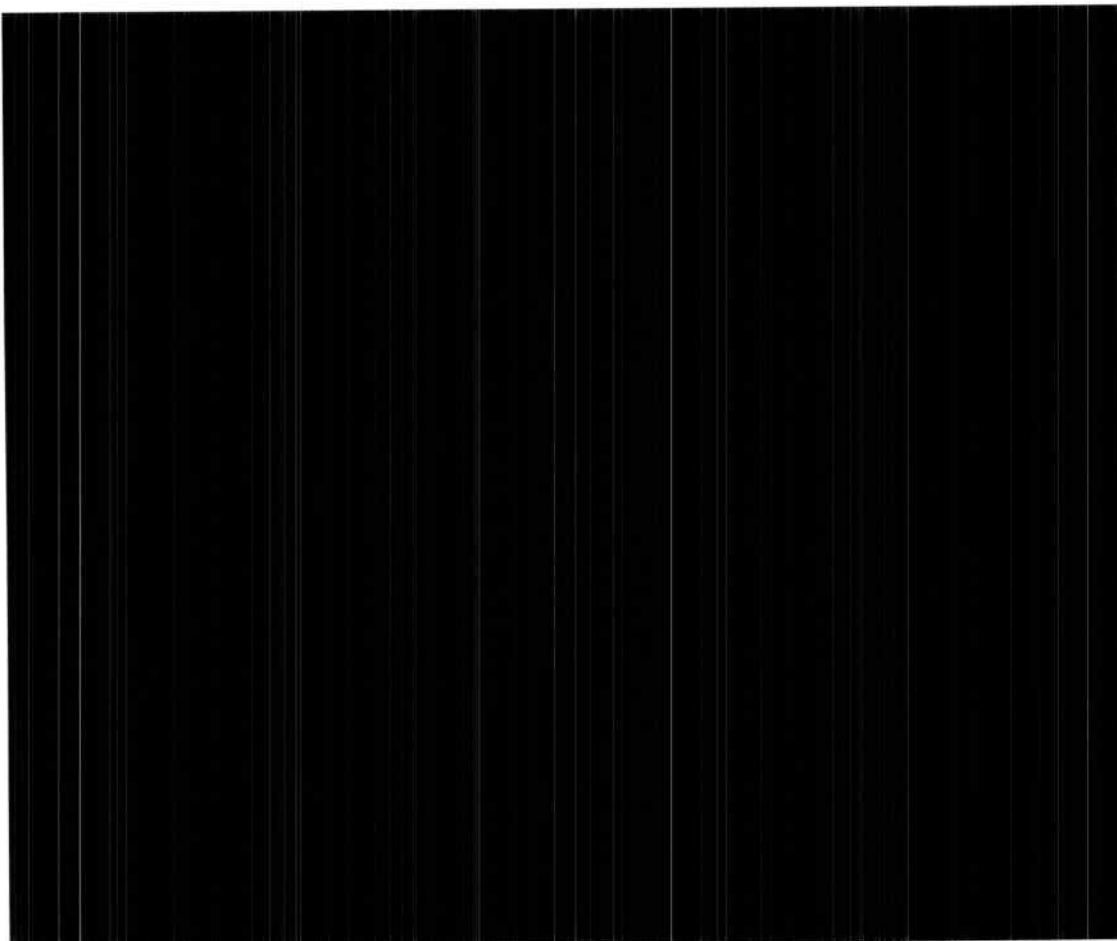
The cross office group will continue to ensure that all action points are taken forward. We will continue to keep a watching brief on wider discussions of the Leveson recommendations and developments on self-regulation. An options paper following the conclusion of the consultation exercise on the framework code of

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practice will be considered in April 2013. This will set out the risks and benefits of issuing our guidance in the form of a code of practice. Our next steps will depend on the approach decided upon.

Contact: Judith Jones/Andrew Rose/ Jonathan Holbrook/Steve Wood

### **2.4**



Contact: Judith Jones

### **2.5 Electoral Registration**

The Government is reforming electoral registration so that registers will be based on individuals rather than households. We have continued to engage with Cabinet Office officials to discuss their plans particularly in relation to the new identity verification process which will involve data matching against a number of government databases. We have given advice on plans to share information with UKBA. We have also had discussions about greater transparency on the commercial uses of the edited register.

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### **Outcomes:**

We continue to make it clear that we support a privacy friendly approach by providing an indefinite opt-out of the edited register. We have provided formal responses on draft statutory instruments on individual electoral registration.

### **Future work:**

To advise on data matching plans for identity verification and anti-fraud purposes. We shall continue to liaise with key stakeholders on the edited register. We shall also continue to work with First Contact and Policy Delivery on complaints about local authority and online directory use of the full and edited registers.

Contact: Judith Jones, Sue Markey

## **2.6 Citizens Advice**

We have continued to build a good relationship with Citizens Advice. They have responded positively to our response to their consultation that we would welcome the opportunity to engage with them on their new intelligence function. This service will use their information on consumer issues to inform work with regulators and enforcers.

### **Outcome:**

A meeting was held with the Citizens Advice policy team responsible for intelligence and ICO Enforcement (intelligence team).

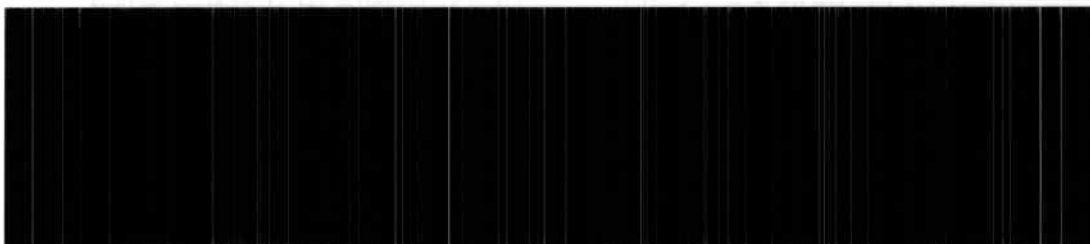
### **Future work:**

On-going engagement as necessary.

Contact: Andrew Rose

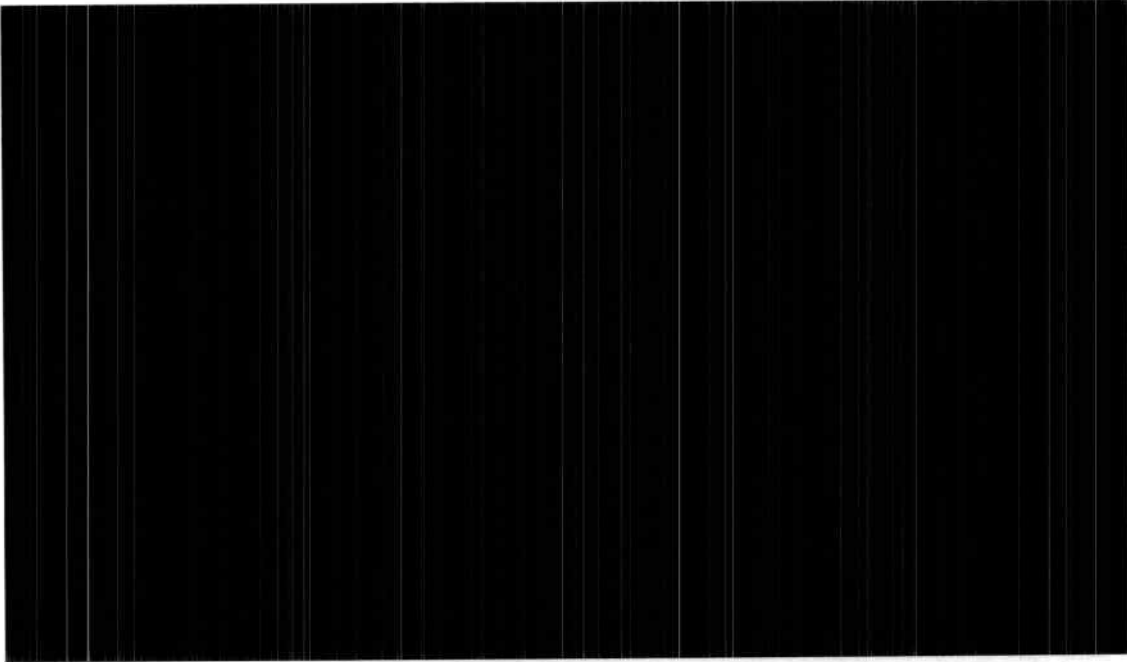
## **3. Public Security Sector**

### **3.1 Draft Communications Data Bill**





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Contact: Jonathan Bamford, Meagan Mirza

### **3.2 Elmer Database**

We undertook a one year review of the 'Elmer' (suspect financial transaction) database which is managed and operated by the Serious Organised Crime Agency (SOCA). This followed on from previous work undertaken at the request of House of Lords European Union Committee. This was effectively a one year review of the implementation of the six year deletion policy which was introduced as a result of the audit the ICO undertook in 2011. Progress has been positive and as well as having no records on the system older than six years SOCA are now manually deleting those records that are flagged as having no connection to criminal activity. This is significant given that there was no retention/deletion policy in place eighteen months ago and records were in effect being retained indefinitely.

#### Outcome:

We have reported the results of our review to the Chair of the House of Lords European Union Sub Committee.

#### Future work:

We will agree further meetings with SOCA once it has been subsumed into the National Crime Agency.

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Contact: Meagan Mirza, Jonathan Bamford

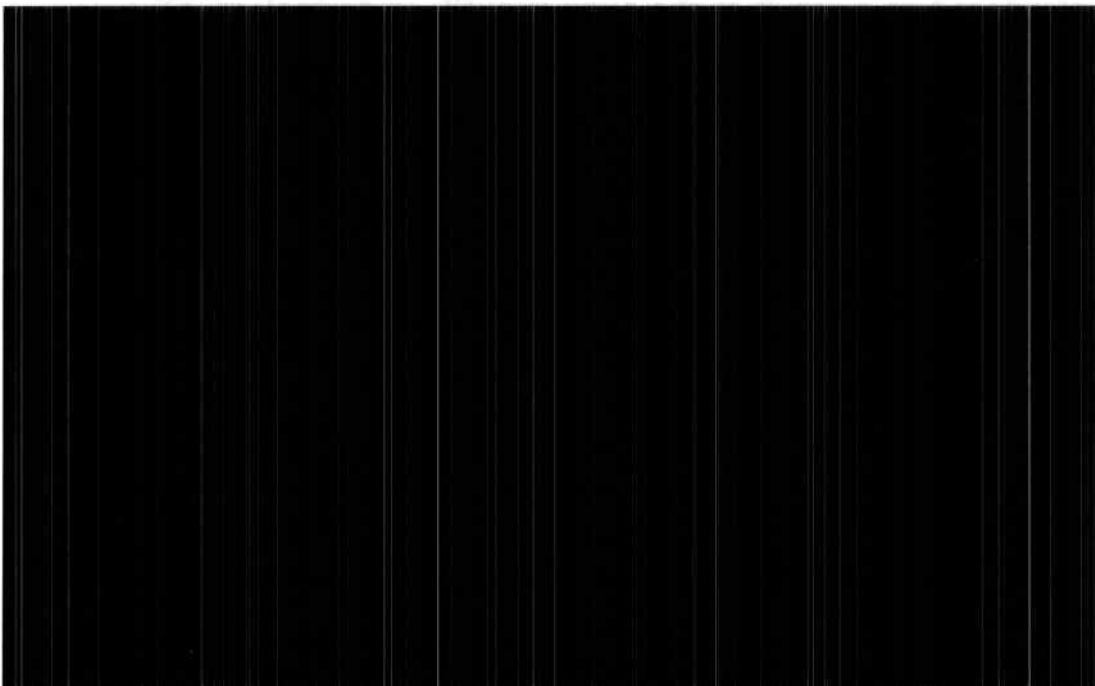
### **3.3 Deputy Prime Minister's Special Adviser**

We met with Nick Clegg's Special Adviser to provide an overview of current issues affecting the criminal justice sector with particular reference to Enforced Subject Access, the Surveillance Camera Code of Practice and its interaction with the CCTV Code of Practice and recent judgements relating to personal data retained and disclosed by police forces such as old and minor criminal convictions and cautions. We provided a detailed explanation of what would be required to commence Section 56 of the Data Protection Act which would mean the practice of enforced subject access would become illegal.

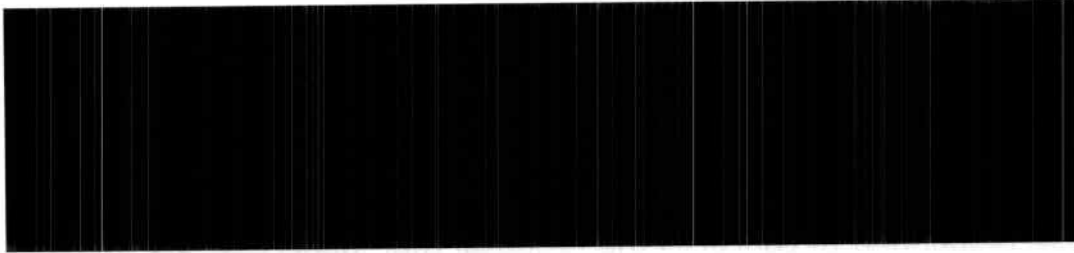


Contact: Meagan Mirza

### **3.4 IPCC**



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Contact: Meagan Mirza

### **3.5 Home Office Centre for Applied Science and Technology (CAST)**

This meeting, at CAST in Sandridge, covered a number of topics of shared interest including ANPR, improving camera resolutions, audio recordings in taxis, E-forensics, extraction tools and training and working cultures. The role of CAST is to test new technologies which may then be deployed in various settings, for example, in police forces.

CAST's testing process appears to be methodical and both parties fully engaged in discussions about the privacy implications in emerging technologies. For example, as camera technology improves, one megapixel camera may be installed to fulfil the task of three lesser definition ones, creating a new scenario for assessing privacy intrusion. Further discussion focused on technology convergence (such as in the Smart Cities projects) where there is scope for increased intrusion.

Staff at CAST demonstrated new HD cameras fitted with facial recognition technology, which led to further discussion about other technologies offering gait analysis and thermal imaging.

#### **Outcome:**

Understanding of technological developments in this sector and ensuring that the privacy implications are factored in as products are developed.

#### **Future work:**

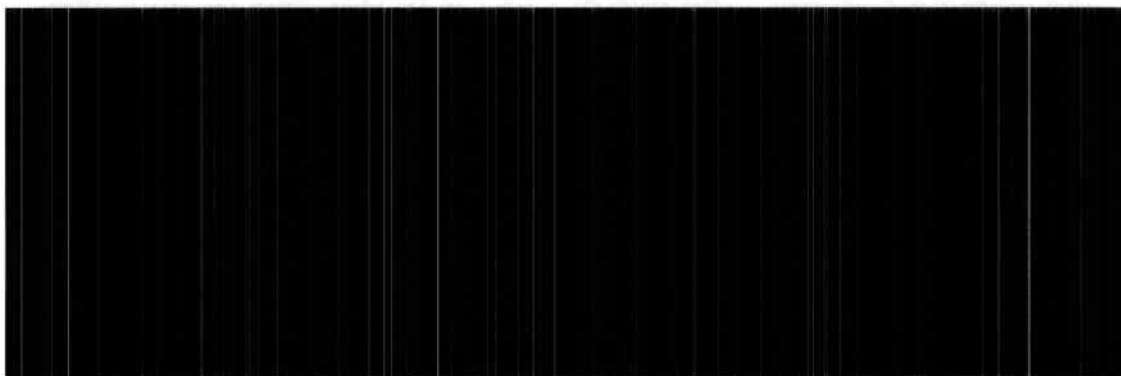
Meetings will continue on an annual basis.

Contact: Anne Russell, Ian Inman, Simon Rice

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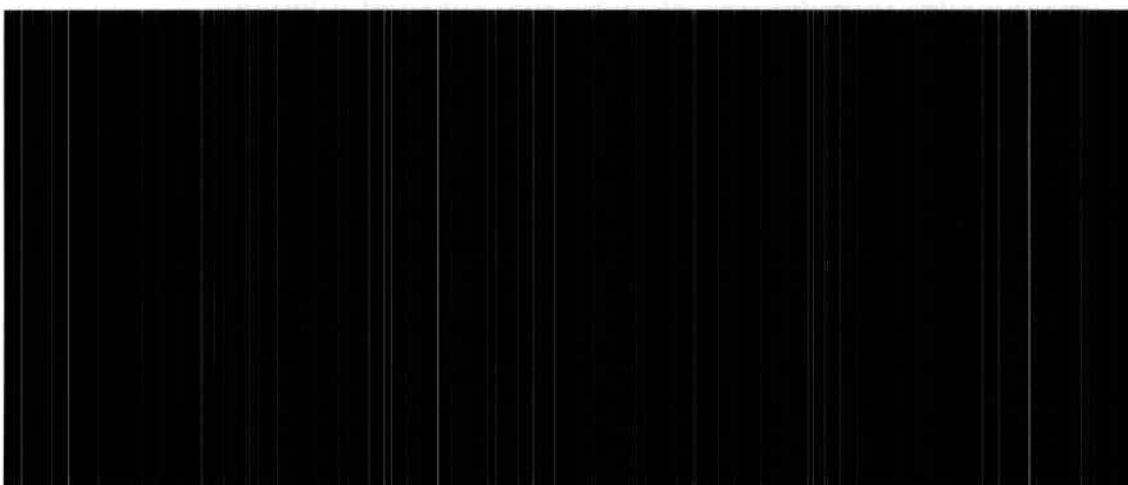
### **3.6 Law Commission Contempt of Court Consultation- publication of arrestee details**

We have responded to the Law Commission's consultation on Contempt of Court which is primarily concerned with updating the Contempt of Court Act. One aspect of the consultation which we have responded to concerns the proposal that 'generally' the names of arrestees will be released to the media but that appropriate safeguards will need to be put in place to ensure that some names are withheld. We have responded that whilst it is recognised that some disclosures of arrestee details occur now, although policies on this differ from force to force, the option of addressing this by introducing a policy whereby 'generally' the names of arrestees will be released raises serious concerns and it is unclear how this indiscriminate approach would comply with the DPA or human rights legislation.

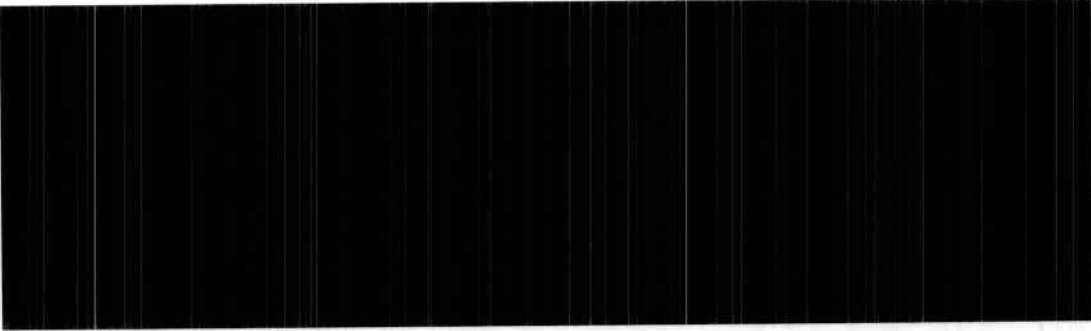


Contact: Meagan Mirza, Anne Russell

### **3.7 LOCOG customer database**

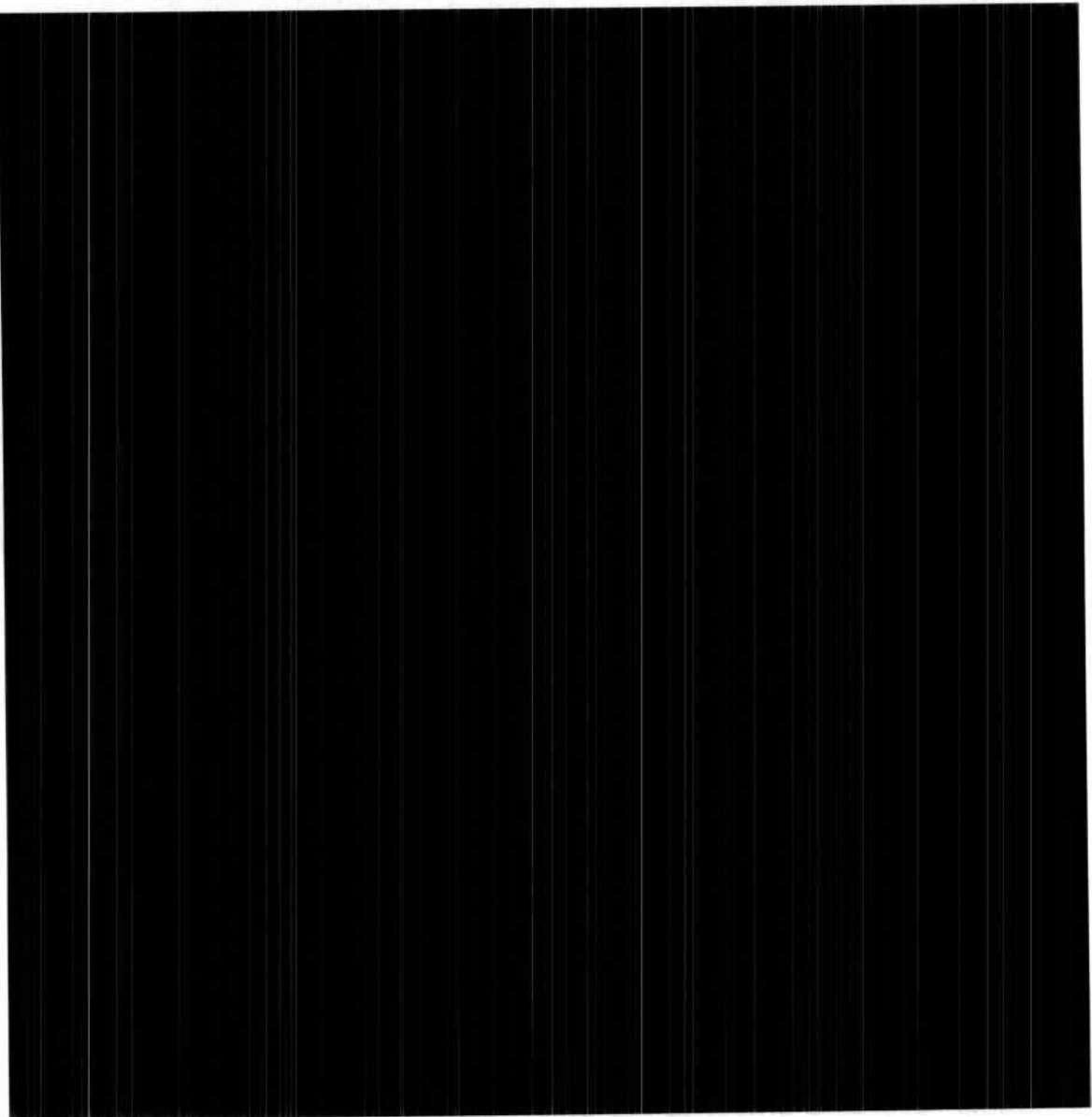


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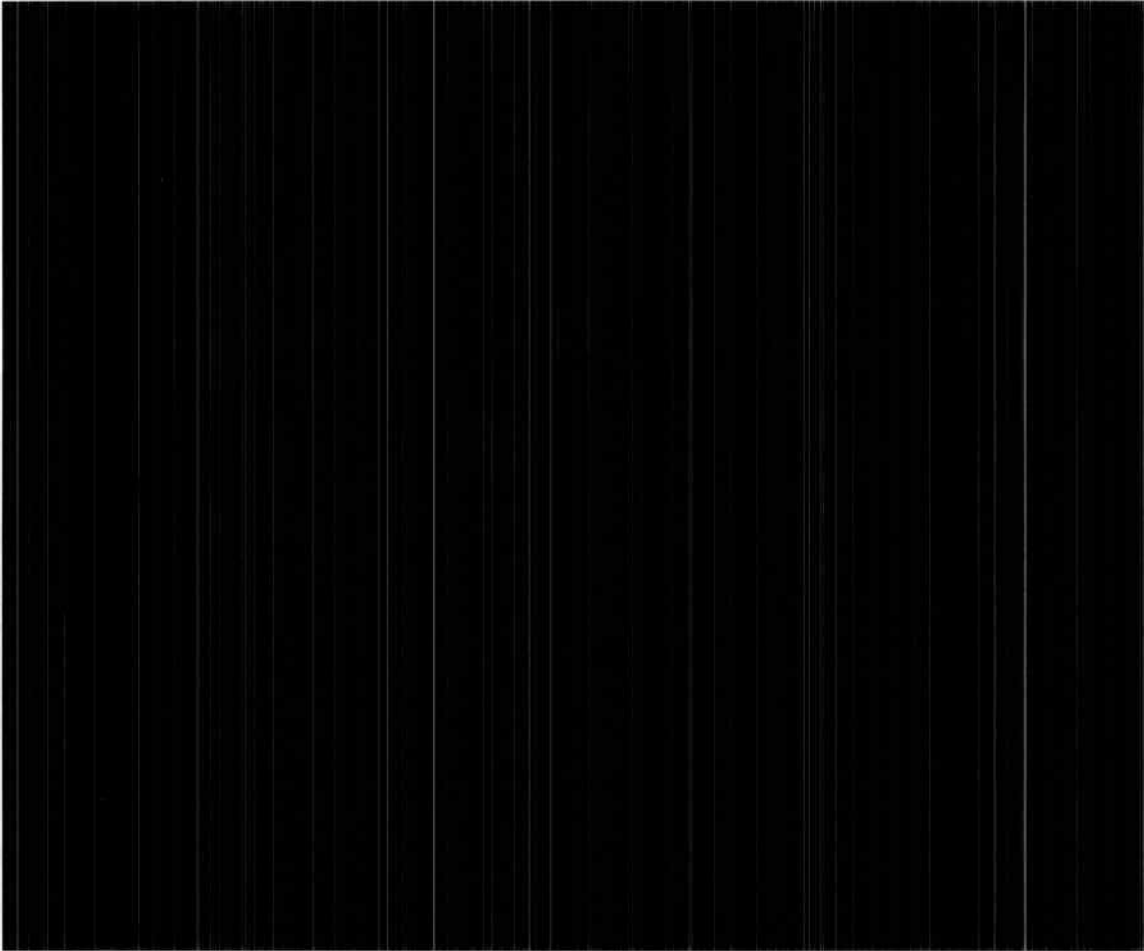
Contact: Anne Russell

**3.8**



Contact: Jenny Childs

### 3.9 Surveillance Camera Systems



Contact: Jonathan Bamford

### 3.10 Surveillance on public transport-CCTV with audio in taxis

The appeal by Southampton City Council against our enforcement notice requiring the cessation of the use of continuous audio recordings in licensed taxis was heard by the First Tier Tribunal. This was the first formal enforcement action taken by us on unlawful processing on the basis that the processing contravened Article Eight of the Human Rights Act.

Outcome:

The Tribunal dismissed the Council's appeal holding that continuous audio recording amounted to unlawful processing as it involved a

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disproportionate interference with the private life of both drivers and passengers

Future work:

The time limit for an appeal has passed so we will be contacting the Council to ensure that they comply with the terms of the Enforcement Notice and judgment. This case will also be reflected in any amendments to the ICO CCTV Code of Practice.

Contact: Jonathan Bamford/ David Evans/Cathy Devitt

### **4. Public Services Sector**

#### **4.1 Identification of structures and data flows in the new NHS Structures in England**

Changes to the NHS in England which took place on April 1<sup>st</sup> necessitate modifications to the data flows within Commissioning and other areas of the Health and Social Care Sector. Key stakeholders in this area include NHS England (Formerly known as the NHS Commissioning Board). We have worked with them to ensure consideration of the Information Rights implications.

Outcome:

Through influencing and persuading key stakeholders we have gained clarity and understanding regarding the status of Clinical Support Groups and Data Management Integration Centres and the data flows associated with them.

The responsible bodies have agreed to complete Privacy Impact Assessments and to put in place the relevant Data Sharing Agreements as soon as possible.

Future Work:

By arranging and attending follow up meetings and throughout involvement on the Confidentiality Advisory Group (CAG) we will track progress and offer further advice as and when required.

Contact: Dawn Monaghan/ David Evans

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### **4.2 NHS Information Governance Review Panel Report (Caldicott 2)**

We have continued to participate in the NHS Information Governance Review Panel and in the production of the report for the Secretary of State for Health.

#### **Outcome:**

ICO views regarding data sharing have been successfully integrated into the report which was sent to the Secretary of State on the 30<sup>th</sup> March.

Networking opportunities were capitalised upon and relationships built at senior levels in the BMA, Royal College of Nursing and Children's Services departments of Local Government.

#### **Future Work:**

The report is to be launched on the 17<sup>th</sup> April. After that date we will be available for comment and will assist and support the communication of the report and to encourage the DoH and other health bodies in accepting and implementing the recommendations within the report.

Contact: Dawn Monaghan

### **4.3 Health and Social Care Act 2012 s263 (Code of Practice on Confidentiality)**

Under s263 The Health and Social Care Information Centre must publish a Code of Practice on confidentiality to be adopted by all qualified health providers. We have contributed to the HSCIC meetings and to the consideration of the wording within the draft code.

#### **Outcome:**

Where possible we have influenced the content of the Code to ensure that Information Rights are correctly represented and that the Code does not contradict ICO advice and guidance.

#### **Future work:**

The Code is being perceived by some NHS bodies as the vehicle to implement the Information Governance Review Report Recommendations. By working with Care Quality Commission and



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the HSCIC we will monitor and analyse the use of the Code and its success in ensuring a consistency across the health and social care Sectors.

Contact: Dawn Monaghan

### **4.4 On line Access to patients Records**

The implementation of the roll out of this system is not expected until April 2015. This initiative will have significant impacts on information rights. We wish to ensure our views and any concerns are taken into account early and that we can influence, support and assist key stakeholders in the development of the initiative.

Outcome:

We continue to work with the Department of Health in identifying the risks associated with the 'roll out' of the present pilot system. The Royal College of General Practitioners are to be instrumental in taking this work forward and we will offer assistance to them.

[REDACTED] Also, the need to consider a potential increase in complaints to the ICO post 2015 relating to accuracy and s10 objections.

Future work:

Contacting the RCGP's to discuss their proposed 'road map'  
Developing a timeline for the approach and what our support/assistance should/can be.

Contact: Dawn Monaghan/ David Evans

### **4.5 Changes to the process of S251 applications and membership of the Confidentiality Advisory Group (CAG)**

The new Health and Social Care Act disbands the Ethics and Confidentiality Committee and the National Information Governance Board and creates a new body the Confidentiality Advisory Group (CAG). CAG will resume authority for authorisation of application from medical researchers under s251 to use patient data without their consent. For some time it has been a goal to ensure that when considering applications to allow the sharing of confidential

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information evidence of compliance with the DPA should be a considered measure.

Outcome:

By working with key stakeholders in the Health Sector we have discussed the introduction of a measurement of 'Evidence of compliance with the DPA Principles' when considering s251 approvals. To facilitate this we have been invited to become a member of the CAG.

Future work:

Attending CAG meetings including scrutiny of applications for s251 approval relating to DPA compliance.

Contact: Dawn Monaghan/David Evans

### **4.6 Internal Policies for dealing with Health Bodies**

The NHS structural changes have required clear policies and procedures for internal operational teams in regard to handling new notifications, on-going cases with moribund bodies etc.

Outcome:

Strategic Liaisons Public Services team have led the work in developing and communicating internal policy documents for operational teams.

Those policies have been 'signed off' by relevant ET members. The policies have been communicated internally through ICON and 'Know How' sessions and to external stakeholders through the website as FAQ's, a blog and a YouTube video.

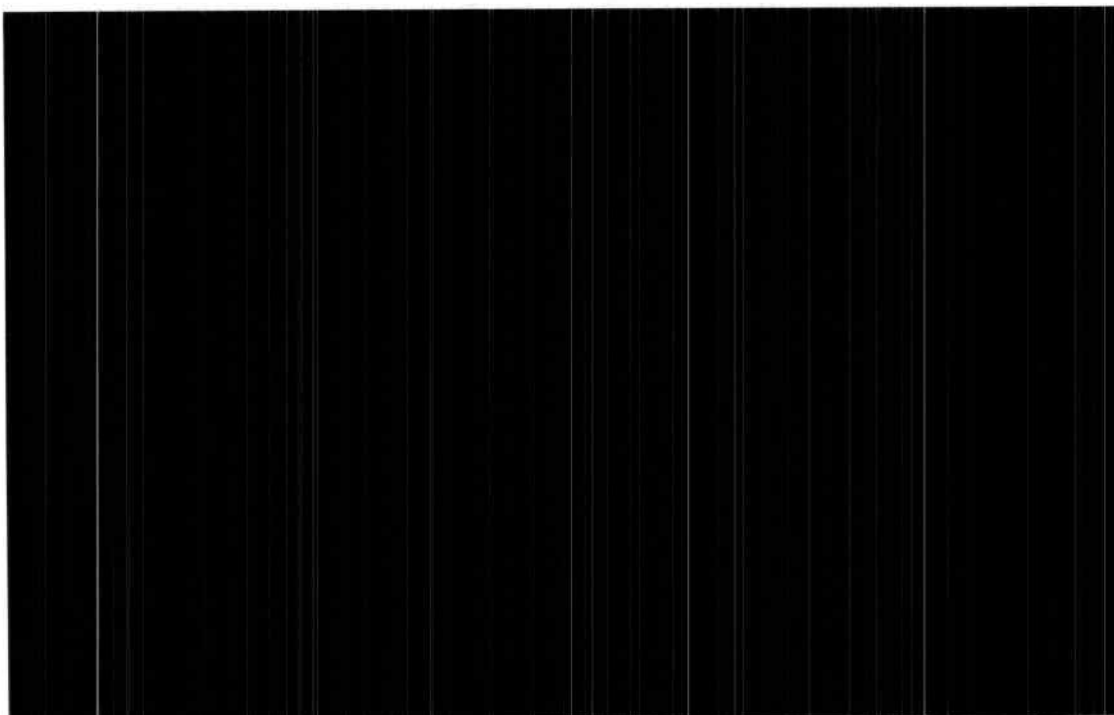
Future work:

Monitoring of 'hits' externally and of enquiries arriving with First Contact, the production of further Blogs and videos if required. Internally follow up 'Know How' sessions if required as the new system and policies 'bed in'

Contact: Dawn Monaghan

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### 4.7 Compulsory audit powers in Local Government sector



Contact: David Evans

### 4.8 High level of complaints and enforcement work generated by Local Authorities

A high level of ICO work is being generated from the Local Government sector.

A substantial amount of sensitive personal information is retained and shared between local authorities and other public authorities. The vulnerability of this information has been illustrated in some of the security breaches. As the new NHS structures in England take shape it is possible that local authorities will be required to handle an increase in sensitive personal data.

Outcome:

Some analysis has shown that work does not always as previously perceived rest within social care departments.

The IRC Local Government Priority Action Group has undertaken to analyse the work further to ascertain where the ICO should target within local authorities to improve the situation.

Future work:

Identifying within the Priority Action Group the main issues which arise in relation to the areas identified. Targeting which

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stakeholders require assistance to improve. Working with the DCLG Local Government Group to assist and support them in finding and implementing solutions.

Contact: Lynne Shackley

### **4.9 Persistent Requestors, persistent complainants**

It has become apparent that numerous Local Authorities are finding it difficult to address on-going Information Governance issues with ex-employees and councillors. These are having an impact upon the operational departments of the ICO. The effect of these requests is also creating a culture of defensiveness and lack of transparency in the way the organisations conduct their business which is counter to the spirit of FOIA.

Outcome:

Meetings have taken place with some of the affected councils and consultants working within this field. Discussions have informed the work of updating the vexatious request guidance and amendments to the Citizens Charter.

Future:

After the launch of the vexatious request guidance we will consider workshops/awareness sessions for staff in affected authorities. Consideration will also be given to the communication of the updated Charter document to ensure individuals understand that with rights come responsibilities

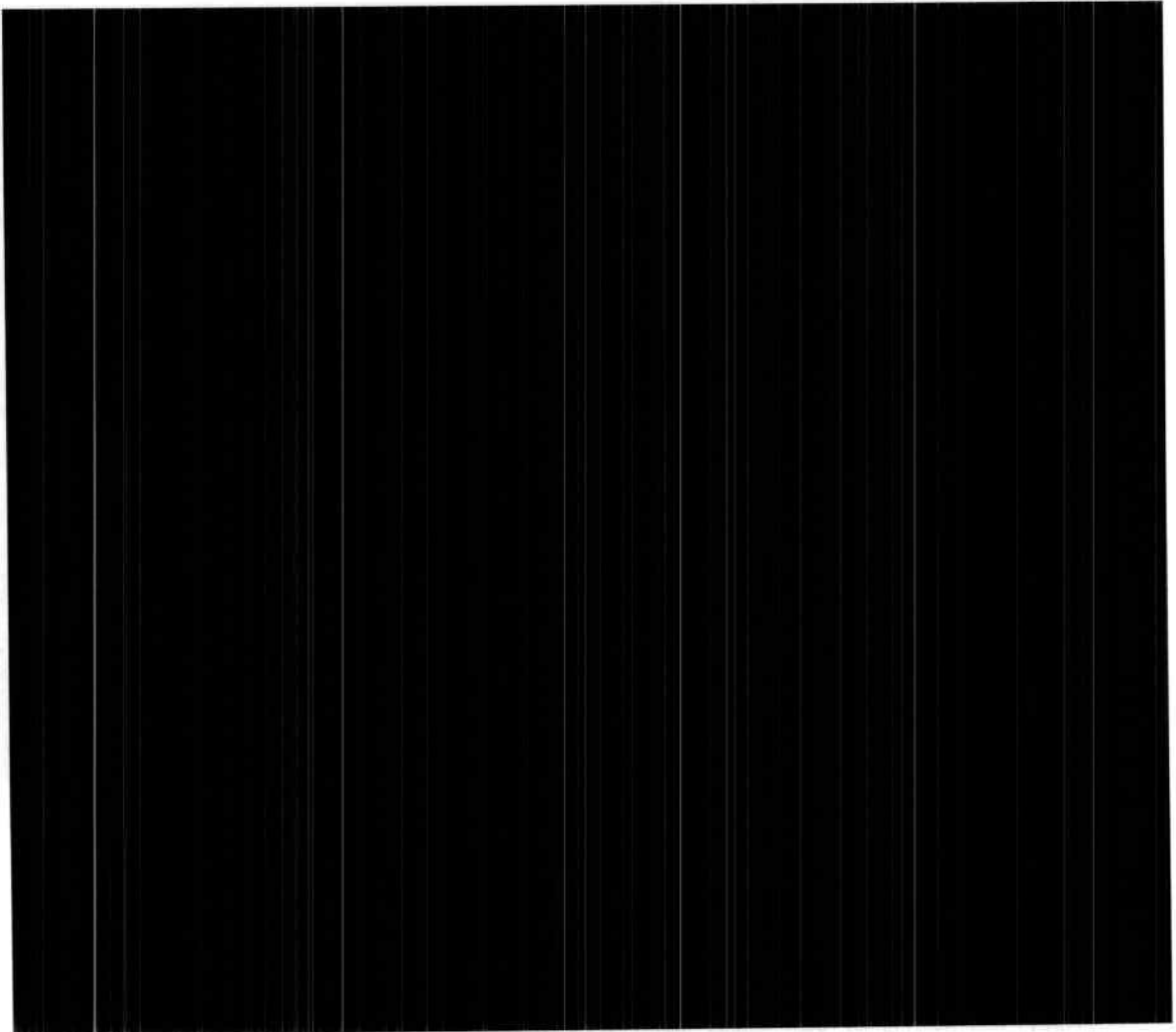
Contact Vicky Cetinkaya

## **5. Business and Industry Sector**

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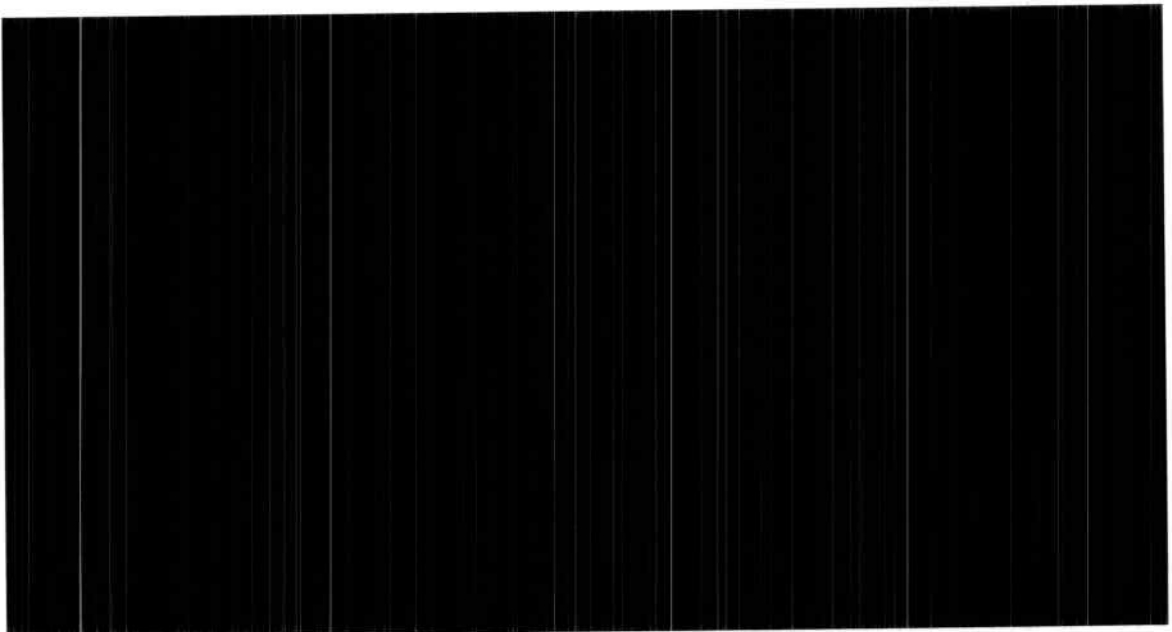


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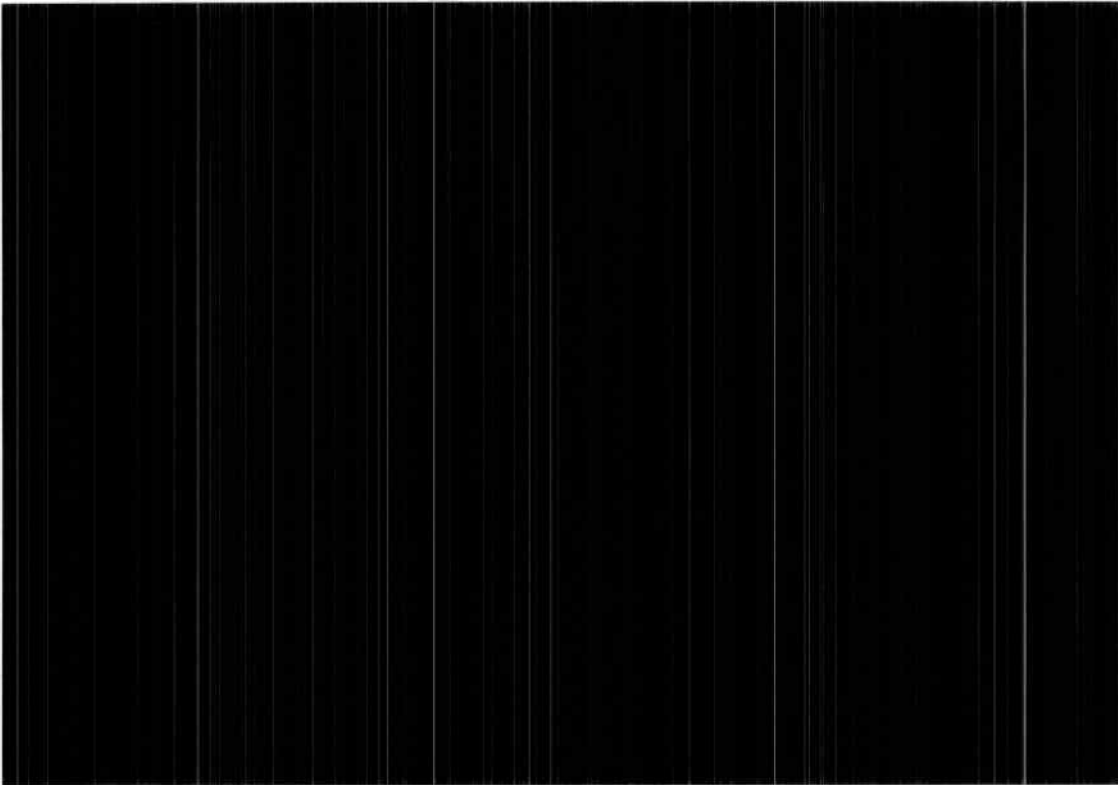


Contact: David J Evans

## **5.2 Telematics**



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Contact: David J Evans/Alastair Barter

### **5.3 Private Parking Enforcement**

Private parking operators require access to the DVLA database to trace keepers of vehicles contravening parking conditions. We were concerned that the primary safeguard against potential abuse of this arrangement, the British Parking Association's Approved Operator Scheme, did not provide the level of assurance we and the public expect.

We had asked BPA to provide further details on how the scheme was currently operating with a view to making recommendations for improving the data protection safeguards. BPA had also committed to ensuring ICO representation on relevant working groups aimed at giving us a view of how standards are maintained in practice.

Outcome:

At a meeting on 11 January 2013 we were able to confirm that the BPA sanctions for members who fail to comply with the BPA code include sanctions severe enough to lead to suspension from the scheme if non-compliance involves a suspected breach of the DPA98. We have since attended the BPA's Standards Advisory Panel and made clear our views on data collection and presented to

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the Local Authority and Bailiff Interest Group where we were able to gather intelligence about LA practice and establish the need for future discussions with BPA on various matters.

We have also gained a commitment that the vetting procedures for membership of the AOS will include stricter conditions relating to data protection – BPA have agreed to adapt ICO's procedures for advisory visits to allow them to assess applicants' ability to comply with DPA98. We have also secured an invitation for an orientation visit to an approved operator site.

Future work:

We are working with BPA on their overhaul of their guidance for members. The site visit is due to take place in Q1 or 2 2013-14. An alleged breach was reported to ICO at the end of March 2013 – our liaison with BPA has enabled us to gain commitments from the member involved with regard to the investigation of the breach and from BPA regarding any lessons learned which could be disseminated among members.

Contact: David J Evans/Ashley Dobson

### **5.4 Anti-fraud and theft initiatives**

In 2010 we produced guidelines aimed at ensuring our advice to organisations engaging in data sharing for the purpose of preventing fraud or theft was correct, consistent and clear. We have regularly used these guidelines, or referred others to them, in our work on this issue. In the last quarter we have seen several public / private sector crossover schemes. An example is the sharing of data between the police and insurance companies relating to abandoned vehicles. We have also discussed a proposed data sharing scheme in the gas industry where the private sector will be sharing data across industry and with the police to prevent, detect and prosecute instances of gas theft.

Outcomes:

We have been able to provide advice on data protection issues relating to these types of schemes ranging from overall perceptions of lawfulness and proportionality to the application of the exemption at section 29(3) of the DPA98.

Future work:

We will be looking in depth at the private sector element and revisiting guidelines that we can use when advising data controllers.

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This will be in conjunction with our colleagues in Public Security who liaise regularly with law enforcement bodies.

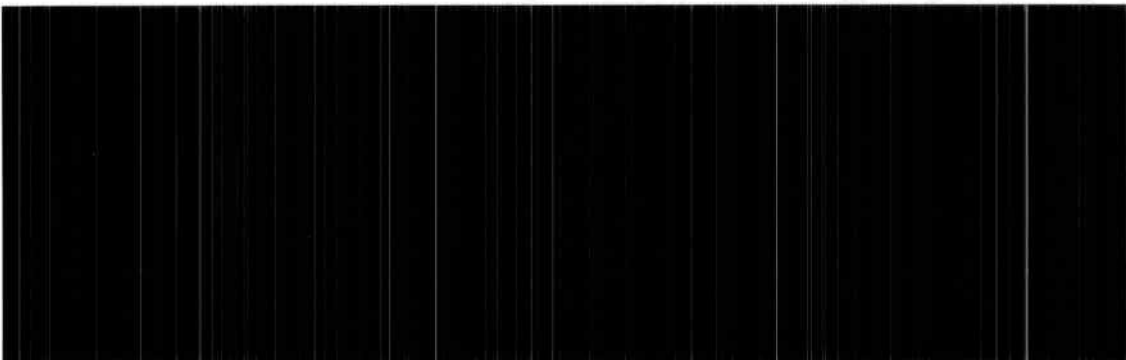
Contact: Alastair Barter/ Abigail Saul

### **5.5 Midata**

This government initiative is aimed at providing consumers with data relating to their activities including purchases, utility consumption, and credit use in reusable electronic form.

The ICO has been named as the "Lead Enforcer" for midata provisions in the Enterprise and Regulatory Reform Bill. The Bill was debated in the Lords in January and the midata provisions have not been amended. The provisions place obligations on named categories of companies (currently energy, banking and mobile phone service providers) to provide customers with transaction data in open formats. The provisions will not take effect until secondary legislation is passed. BIS is currently taking forward a voluntary programme and will only consider activating the legislation if the self-regulatory approach has failed. The Bill will now be considered in the Commons.

The ICO has agreed to take on the role on the basis of adequate resources being provided (in addition to DP and FOI resources). The Bill enables grant in aid to be provided, though other funding options may still be discussed with BIS.




We have also attended various working groups aimed at identifying the potential privacy and security risks arising from Midata as well as mapping onto this analysis the areas where current legislation mitigates those risks.



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### Outcomes:

We have been able to ensure that the data protection specific risks ICO foresees, but which might not be apparent to other stakeholders, have been given prominence in discussions about potential safeguards.



### Future work:

We will continue to participate in the working group meetings and attend the Strategy Board. BIS are aware of the need to liaise with ICO on the possibility of putting Midata on a legislative footing. The detail of funding will be discussed when it is clear secondary legislation will definitely be passed.

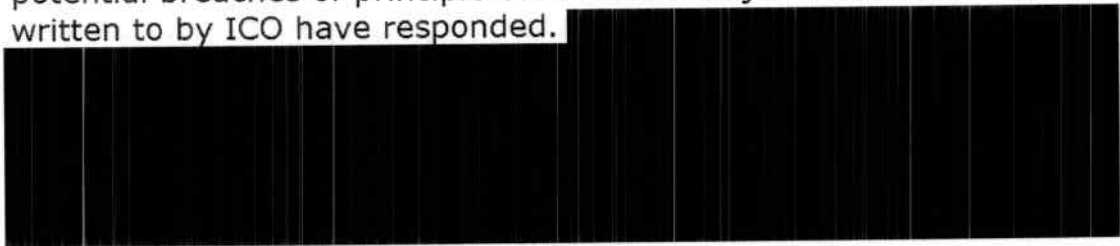
Contact: Steve Wood/David J Evans/Abigail Saul/Jonathan Bamford

## 5.6 Banks and Subject Access Requests

An on-going issue arising from disputes between banks and Claims Management Companies (CMCs) continued to require efforts to engage and influence. In anticipation of the risk of potentially hundreds, perhaps thousands, of requests for assessment in relation to failed subject access requests (SARs), we wrote to major lenders requesting information relating to their current capability to deal with such requests. We ensured that lenders were fully aware of the ICO's motivation and objectives in this regard and of the importance of provided accurate responses.

### Outcome:

We encouraged co-operation by reminding lenders not only of their legal obligations but also of the fact that if they wanted ICO to take their concerns regarding the practices of some CMCs on board then we would have to act fairly with regard to CMCs concerns about potential breaches of principle 6. All of the major lenders that were written to by ICO have responded.



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Future work:

We predict that this will build over the next quarter as both the CMCs and banks look to the ICO for guidance. We will be speaking at high profile industry events, talking to some of the major banks and liaising with MoJ to try and get the ICO in a position where we can discuss the issue with both sides rather than hearing the opinions independently of each other. The objective here is to ensure that banking and CMC sectors understand our position and, as a result, prevent large numbers of complaints. Business and Industry group will also provide the Enforcement Intelligence Hub with an overview of previous liaison with banks and CMCs regarding SARs. The aim is to provide layer of intelligence to add context to the statistics already gathered from the banks and assist future decision making.

Contact: Alastair Barter

### **6. National Regions**

#### **Wales**

##### **6.1 “Handle with Care” workshops**

Summary of work undertaken:

In February we ran four hands-on practical workshops across Wales aimed at promoting good practice in handling personal data. The target audience was front line staff with data handling responsibilities but without formal DPA qualifications. Attendees included representatives from local government, NHS, housing associations, and schools, with some private sector representation. We drew heavily on examples of good and bad practice uncovered by work to date in the ICO’s audit and enforcement departments, and included group work via scenarios.

Outcomes:

The feedback we received was excellent. We had deliberately kept the numbers low to encourage maximum participation, but demand far exceeded the places available, so it is likely we will run more in the future.

Contact: John Sweeney

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### **6.2 Collective Leadership Pledge**

Summary of work undertaken / Outcomes:

A joint initiative with the Welsh Government aimed at promoting the safe sharing of personal data within the public sector in Wales. In January, a joint letter was sent from Christopher Graham and Carl Sargeant (Minister for Local Government) to all Welsh public sector Chief Executives. This included a Collective Leadership Pledge for them to sign, committing their organisations to the proper handling of personal data, particularly when sharing information. Many have now signed up to this. The next step was to commence a series of high level regional discussions across Wales, facilitated by members of the minister-led Public Services Leadership Group. We have played a key role in the discussions held to date, which have considered and identified how the Pledge could be translated into practical action by the organisations concerned. The Information Commissioner attended the launch of the regional discussions in March, and we have since attended two more.

Future action:

More regional discussions are planned for April, at which we will be present.

Contact: Anne Jones / Helen Phillips

### **6.3 Advisory visits and Assembly Member awareness-raising**

Summary of work undertaken / Outcomes:

In conjunction with staff from Good Practice, we conducted advisory visits at two Assembly Member constituency offices in Wales, with two more scheduled for the first quarter of 2013/14. A key objective of the advisory visits was to pass on the lessons learnt to other Assembly Members. This was duly done immediately following the visits, via a series of awareness raising sessions for Assembly Members and their support staff. It was carried out on a party-political basis, to encourage maximum participation, and seven sessions were held in total, with 100% AM turnout from one of the parties.

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Future action:

A good practice 'sector report' will be compiled from the advisory visits undertaken, which can then be disseminated further (ie not just in Wales).

Contact: Anne Jones

### **Scotland**

#### **6.4 Children & Young People (Scotland) Bill: Named Person Working Group & Steering Group**

Work includes:

Working with Scottish Government Getting It Right For Every Child Team (child protection) in the formation of the above legislation and associated practitioner guidance.

Future action:

Working groups will continue to examine the above and input into guidance as the Bill progresses through Parliament.

Outcomes:

Increased awareness and credibility of the ICO as Regulator and source of advice and support. Increased stakeholder confidence.

Contact: Maureen Falconer

#### **6.5 Register of Young Voters**

Work includes:

Following our earlier representations to the Scottish Government on its proposals for a Register of Young Voters in preparation for the extension of the franchise to 16 and 17 years for the forthcoming Referendum, a number of significant changes were made prior to the Scottish Independence Referendum (Franchise) Bill being introduced to the Scottish Parliament. Subsequently, we gave evidence to the Bill Committee in March 2013 and we have been invited back to give further evidence in May.

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### Future Actions:

Monitoring of the Bill's progress. Giving evidence to the Bill Committee.

### Outcomes:

Improved protection for young people being included in the franchise.

Contact: Ken Macdonald

## **Northern Ireland**

### **6.6 Response to Department of Justice consultation 'Making a difference: Improving access to justice for victims and witnesses of crime'.**

#### Work includes:

Responding to the Department's consultation, drawing attention to ICO guidance on data sharing and fair processing as well as advising that the Department liaises with the ICO to ensure that all recommendations from the consultation can meet the requirements of the DPA.

#### Future action:

Meet with and continue to provide advice to the Department post-consultation

#### Outcomes:

Embedding information governance and privacy concepts into these consultation proposals.

Contact: Catherine Vint

### **6.7 Raising awareness of information rights in the voluntary sector**

#### Work includes:

The Belfast office has continued to work in partnership with the voluntary sector umbrella body, the Northern Ireland Council for

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Voluntary Associations (NICVA) to promote information rights amongst its members including planning to deliver three seminars on data protection: one general introductory session and two further sessions on data sharing issues for charities.

Future Action:

The NIRO will continue to liaise with umbrella organisations across the voluntary sector, to raise awareness of information rights amongst stakeholders. As many voluntary organisations are providing (or tendering for) public service contracts, funders are seeking evidence of data protection policies and procedures as part of the contract or procurement process. The NIRO will also identify further opportunities to engage with this sector and adapt our advice to meet the issues or concerns around data protection.

Outcomes:

Heightened awareness of data protection amongst the voluntary sector and giving voluntary organisations the advice and tools to make practical and informed decisions on data protection issues.

Contact: Nigel Treanor

## **7. International Activities**

### **7.1 Draft European Data Protection Regulation and Directive**

We have continued our involvement as the legislative discussions reach their exceptionally busy peak in the first quarter of 2013 at the EU Institutions:

*Raising awareness across the ICO and beyond:*

There have been two further meetings of the cross-office group to roll out its communication strategy both at political and technical levels to the EU proposals. The group reflected on differences between EU and US approaches to regulating privacy – a topic which has again climbed the policy agenda. The group's collective thinking also led to the publication of the ICO's latest views on the process in the European Parliament and the Council, which was received well in policy circles. This built on the initial analysis document which was produced shortly after the European Commission's proposals were published in early 2012.

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The smaller cross-office group that had been working on the article-by-article analysis over the previous months also decided to publish an abridged version of the analysis to the public. We ensured that this was distributed to MEPs, the Ministry of Justice and other key actors in the policymaking process to aid their thinking as they move into the territory of formulating compromise amendments.

David Smith reprised his blog series on the EU reform process to provide a more accessible and transparent way for the public to stay up-to-date with what the ICO is doing to contribute to this reform.

We identified at least six priority areas for action in March 2013 so that work on amendments in the Council and Parliament could be more efficiently dedicated towards achieving results:

- Definition of personal data (pseudonymisation/anonymisation and definition of personal/household data);
- Legitimate interest;
- Prior authorisation;
- Consent;
- Sanctions.
- Consistency – one-stop-shop for businesses and citizens (ICO preferring the lead rather than competent authority approach).

A know-about session in February 2013 held jointly by Policy Delivery and Strategic Liaison departments informed ICO staff of the latest developments in the reform process.

London Economics have now completed their research report, commissioned by the ICO, on the implications of the new DP Regulation for business. The findings (not yet in the public domain) will add considerably to the debate about the costs/benefits of the new Regulation. The research includes a unique you-gov poll of 500 businesses. The report also provides recommendations for the ICO about how they can best support business in the implementation of the Regulation. Previous impact assessments have been diverse in their assessment of the costs – the EC estimate cost savings of 2.3m EURO whilst the MoJ estimate net costs of between £80m and £320m per year. The ICO/London Economics study sheds light on the uncertainty that exists within the UK business population regarding the scope of the Regulation and its cost impact. Whilst acknowledging the significance of the costs and impact on business



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the study casts doubt on the more extreme cost estimates proposed by stakeholders. The findings from the report should enable a more objective debate, in the UK and Europe.

The ICO has been leading the debate on the issues related to defining anonymisation and pseudonymisation in the proposed DP Regulation. The ICO is concerned that understanding of the terms differs across Europe and an overly broad definition might draw information within the Regulation, which is not currently treated as personal data, for example pseudonymised research data shared with third parties. The concern is that an overly broad focus will draw focus away from the information which should be covered and protected. A paper on the issues related to definition has been prepared for the Article 29 "Future of Privacy" subgroup. The ICO was also invited by the Irish Presidency to present its approach to anonymisation (drawing on the recent Code of Practice) to the DAPIX working group of the Council of the EU.

Future work:

The research report will be published late April/early May. The ICO will circulate to key stakeholders in the UK and in Europe.

The ICO will continue to attend meetings of the DAPIX working party and provide written comments to the MOJ on draft amendments and other documents produced by the Irish Presidency.

Contact: Iain Bourne/Steve Wood

*UK Government and UK Parliamentary developments on the EU reform:*

The UK Government response to the UK Parliament's Justice Committee report on the EU DP framework proposals, published in mid-January 2013 took into account the impact of the new proposals on the ICO.

Subsequently, the UK Parliament's Justice Committee published its Ninth Report on the functions, powers and resources of the Information Commissioner in March.

*European Parliamentary developments on the EU reform:*



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The draft reports on both the draft Regulation and the draft Directive (covering law enforcement activities) for the lead committee (Civil Liberties, Justice and Home Affairs) at the European Parliament also required our analysis and consolidation of contacts towards influential UK MEPs from all major political parties including fielding questions and queries from individual MEPs, securing the ICO as a firmly established consultative resource in the debate.

Both EU institutions have accelerated analysis of the draft EU General Data Protection Regulation but are still somewhat lagging on their analysis of the draft Directive. Discussions continue with the MoJ on how the UK will apply the Directive if the Framework Decision continues to apply, pending UK opt-outs in 2013.

### *ICO interaction with the European Commission on the EU reform:*

The European Commission's Director for DG Justice Françoise Le Bail was the keynote speaker at the ICO's DPO Conference on 5 March 2013. The speech indicated the beginnings of compromises in the European Commission's proposals on themes such as risk-based approach and pseudonymised data.

The ICO's DPO Conference in March also included a session on the EU data protection reform and gathered stakeholder feedback in relation to a new ICO study on the business impact of the new proposals.

### *Article 29 Working Party view on the EU reform:*

The Article 29 Working Party published an Opinion on the draft Directive and also published a special statement on the new EU draft Regulation at its plenary end February which concentrated primarily on the issues of:

- Definition of personal data (focussed on whether pseudonymised data should always be treated like other personal data); defining consent and defining situations in which delegated acts are appropriate;
- Against further flexibility for the public sector;
- Consent;
- Governance;
- How to achieve the right risk-based approach – requiring compliance in a scalable manner appropriate to the risk;

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- International transfers to third countries – in particular the use of binding instruments to ensure application of EU law.

The Working Party also published two annexes alongside this statement – one on identifying the lead/competent authority and the other on proposals for amendments on defining data processing for personal and household purposes. The working group on Future of Privacy also developed its thinking on the issue of profiling.

### *Future of US Safe Harbor:*

Christopher Graham presented at the IAPP Global Congress on a panel focussed on the future of the US Safe Harbor under the new EU framework. Strategic Liaison and Policy Delivery produced a special handout and briefing for participants at the level of expert Q&A session comparing the options for organisations wishing to transfer data to the US from the EU and assessing future options under the proposed future EU framework. This raised the ICO's profile on this issue with an international expert audience and helped us better understand the US Administration's current position in relation to the future of Safe Harbor within the new EU framework.

### *DPA funding:*

We continue to be vocal about the lack of attention by other entities/stakeholders to the impact on the ICO of the abolishment of notification as a funding source under the new EU data protection framework.

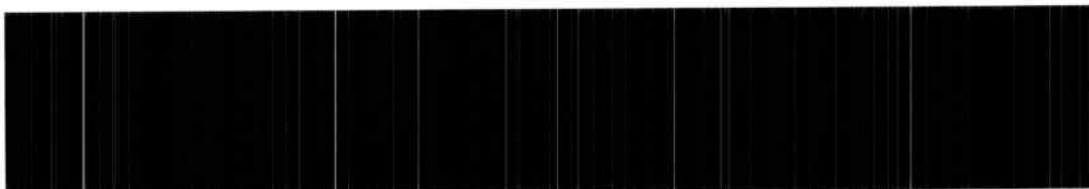
David Smith and Christopher Graham addressed the issue of funding to meet the ICO's anticipated needs under the proposed Regulation when the work of the ICO was considered by the House of Commons Justice Committee in February. The ICO along with the Article 29 Working Party has called on Commissioner Reding to clarify her intentions



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### Outcome:

We have deepened the level of our involvement taking numerous opportunities to exert influence over developments of priority for the ICO.



### Future work:

The European Parliament now expects to vote on its draft report at the end of May (postponed from May 2013 and afterwards start a trilogue negotiation process with the Council on both the draft Regulation and Directive. However, the timetable has been constantly delayed so further delay should not be ruled out. We will continue to play an active role in discussions both with the European Parliament and the Council via the MoJ, respectful of its role within the Article 29 Working Party.

A possible partial general approach between Member States is still expected in June 2013's Justice and Home Affairs Council.

Contact: Steve Wood/Hannah McCausland

### **7.2 Transfer of personal data to third country law enforcement authorities**

There continues to be to be pressure to extend data sharing arrangements with third states. Information gathering by the ICO at the Computers, Privacy and Data Protection conference in Brussels at the end of January as well as at the European Parliament led to the identification of the need for the ICO to work on the new US FISA (Foreign Intelligence Surveillance Act) Amendment Act 2012 which came into force at the beginning of 2013. A new study on this law by the European Parliament containing criticism of EU DPAs including the ICO raises some similar issues as in the past in relation to the US Patriot Act and cloud computing and some new issues. For example, it is doubtful how EU legal requirements, in particular in the area of cloud computing, could be complied with if data is accessed by third-country authorities without authorization

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under European law. In this context, the EU standard contractual clauses for processors as well as the EU-US Safe Harbor Agreement would have to be reassessed.

Outcome:

Article 29 WP agreed to commence work on this at February plenary.

Future work:

The ICO continues to monitor developments on this including through the Article 29 Working Party

We are now developing an ICO line on this issue. We will continue to monitor developments. Both the Borders, Travel and Law Enforcement Subgroup (BTLE) and the International Transfers Subgroup of the Article 29 Working Party will need to advise the plenary in April on the steps that need to be taken.

Contact: Ian Williams/Geri Dersley

### 7.3 Other Article 29 WP developments

The Working Party's activities continue to span a wide range of issues and there has been substantial progress including publication of opinions

Outcomes:


Completed work this quarter (other than that on the EU reform) includes:

- Adoption of a new opinion on Mobile Apps which is aimed not just at app developers but also the wider mobile app ecosystem, in particular mobile operating system owners.
- Adoption of a response on the World Anti-Doping Agency's (WADA )New Code and Standards.
- Adoption of a new opinion on Purpose Limitation.

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### Future work:

- Continue as rapporteur on financial matters sub-group for profiling measures.
  - Continue as co-rapporteur on a new opinion on the concept of necessity for the borders, travellers and law enforcement sub-group.
  - Continue our work leading Article 29 on international enforcement coordination (ie a further questionnaire to better understand the legal, technical and political enablers and barriers in respect of enforcement coordination).
  - Further coordination work is required on the ICO contribution to the legal opinion on the API data directive.
  - Finalise co-rapporteurship opinion on smart metering.
  -
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- Finalise the work on an explanatory document for BCRs for processors.
  - Continue work in the eGovernment sub-group to further promote at international level the ICO's extensive work on open data.
  - Consult with UK Home Office, IATA and relevant stakeholders on future security/personal data screening at airports.
  - Consult with UK Home Office on the use of Passenger Name Records data (PNR) for European flights.

Contact: Hannah McCausland/Ian Williams

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### **7.4 EU-level supervisory bodies**

This work covers the Europol Joint Supervisory Body, the Schengen Joint Supervisory Authority, the Customs Joint Supervisory Authority, Customs co-ordinated supervision with EDPS, and Eurodac supervision.

We have a legal obligation to attend these meetings and be involved in the work, in particular as regards supervision at national level.

JSB Europol, as well as JSA Customs and Schengen meetings took place during this quarter.

### **7.5 JSA Schengen**

Outcomes:

The UK is only an observer at the Schengen JSA and the current formation of the JSA has now officially come to an end in March. A new group will meet later in the year as the new Schengen SIS II system is rolled out. European Data Protection Supervisor (EDPS) will lead the new work under a new 'coordinated supervision' role and the Council of the EU leadership will come to an end.

Future work:

[REDACTED]

### **7.6 JSB Europol**

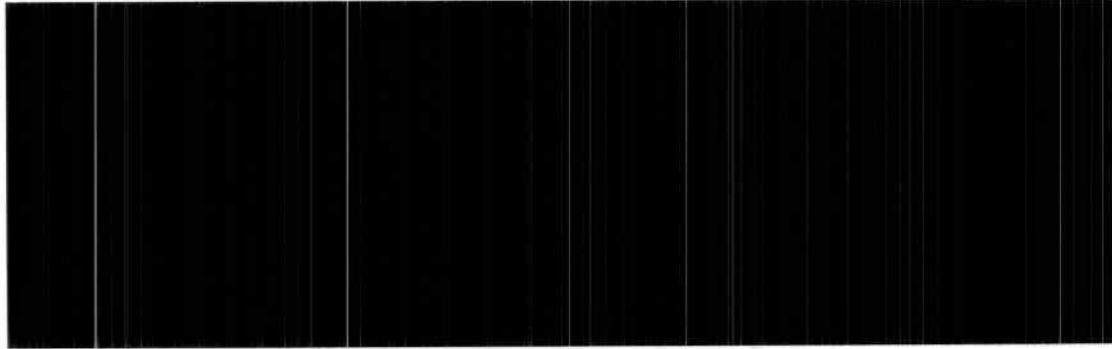
A new Chair has been elected in March – the Slovenian Commissioner Natasa Pirc Musar. Italy takes the vice-chair.

Outcomes:

Annual Europol Inspection (4-8) March 2013 undertaken. The ICO supplied a team member.

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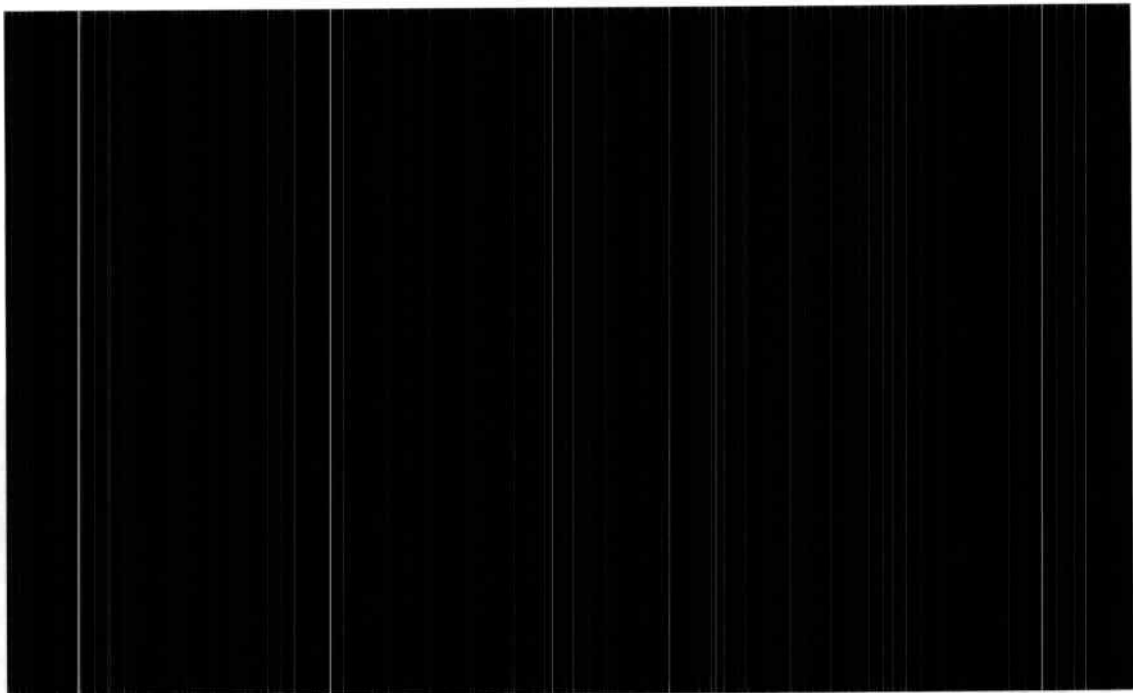


Contact: Ian Williams

### **7.7 International Enforcement cooperation**

Outcomes:

We will present our report on international enforcement cooperation developments at the Article 29 plenary meeting in April. This comprises an Action Plan for 2013-2014 from the International Working Group on International Enforcement Coordination. The UK and Canada are co-chairing this working group which was established during the inaugural international enforcement coordination event in Montreal in 2012.



Contact: Ian Williams

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### **7.8 Overseas visitors**

The ICO hosted the Data Protection Commissioners from Dubai and Singapore and hosted a delegation from Thai State agencies and the Thai judiciary who work on data protection law in Thailand.

Graham Smith addressed a delegation of senior officials and parliamentarians from Tanzania at the Foreign Office in London. Tanzania is considering a new law on access to information to be enforced by an independent Information Commissioner.

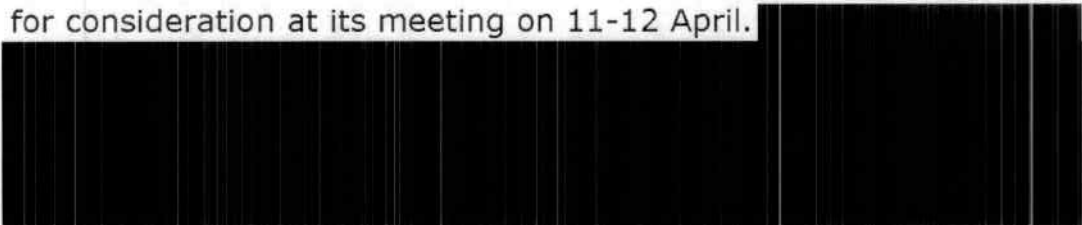
Contact: Ian Williams/Graham Smith

### **7.9 OECD: Working Party on Information Security and Privacy**

We participate in this group alongside the UK government representative

Outcomes:

The proposed revisions to the OECD Privacy Guidelines and the Supplementary Explanatory Memorandum have been submitted to the Information Computers and Communications Policy Committee for consideration at its meeting on 11-12 April.



Future work:

- Adopt the new Guidelines.
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Contact: David Smith



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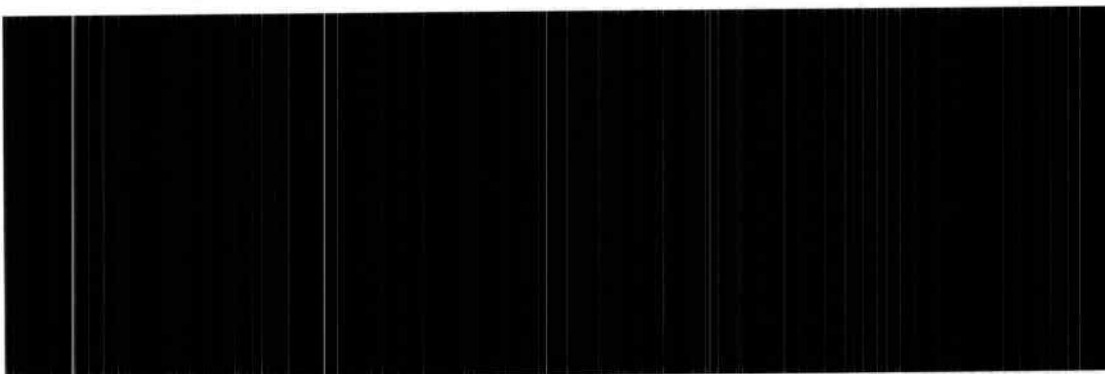
### 8. Enforcement

#### 8.1 Privacy and Electronic Communications Regulations:

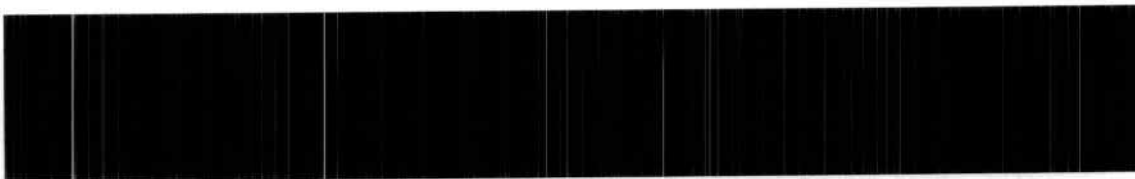
This Quarter

This quarter the ICO has served a monetary penalty of £90,000 against a company called DM Design for breaching the Privacy and Electronic Communications Regulations (PECR). It is the first monetary penalty for making unsolicited live marketing calls to consumers, and achieved widespread publicity. Another two Notices of Intent were issued for similar breaches under PECR, with the final monetary penalties expected to be issued in the next quarter.

In this quarter, the PECR investigations team held a series of meetings with companies identified as being a risk in terms of their compliance. Some of the companies, such as Talk Talk, had already introduced improvements, which has meant a substantial reduction in complaints by consumers. We have also gained insight into the role of lead generation and list brokering, and this has helped identify new opportunities for better coordination with other regulators and trade associations in the first quarter of 2013/14 and development of new industry workshops in the 2nd and 3rd quarters.



We also held the first multi-agency meeting of a group which is developing a strategic threat assessment into unsolicited marketing. The meeting was held at the offices of Ofcom, who are participants, along with a number of consumer groups and regulators. The ICO are leading on this multi-agency work.



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### Next Quarter

We aim to continue our focus on delivering prosecutions under section 55 of the DPA, and highlighting the case for improved sentencing aimed at deterring the trade in personal data.

We aim to identify organisations operating unlawfully under PECR and deliver further Notices of Intent with a view to issuing monetary penalty notices, if warranted, to act as a punishment for unlawful behaviour and as a deterrent for others.

Contact: Steve Eckersley

### 8.2 Civil Investigation Team – DPA:

#### This quarter

This quarter the Civil Investigation Team risk assessed over 380 reports of organisations committing potential breaches of the Data Protection Act 1998 (DPA). Just under 10% of these were assessed as being high risk cases, a figure that is consistent with the team's experience over the year as a whole. 319 cases are being actively investigated at present, with a further 249 cases awaiting allocation. A weekly assessment of the queue is continuing to take place to identify potential closures, as reflected in a substantially improved case closure rate in recent weeks.

The most significant work areas for DPA breaches continue to be health and local government. Over 50% of the cases received relate to the ICO's priority risk areas; Health, Finance, Local Government and Criminal Justice.

Two DPA monetary penalty notices, totalling £400,000, were issued in the quarter. One of the Notices issued relates to Sony International, a significant and well known multinational organisation. The penalty received substantial media coverage and marked a further milestone in the ICO's commitment to tackling insufficient web security controls. In addition, six DPA Notices of Intent were served in the quarter.

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### Next Quarter



Collaborative work with the Department of Health (DoH), in order to support the reporting of data incidents within the NHS is continuing to gather pace. An onsite meeting at the DoH's London premises took place on 5 April 2013. Further, and in support of our own initiative to manage the intake of self-reported breaches, an interactive tool for the referral of incidents to the ICO is under development.

A scoping meeting with First Contact has taken place to better understand the front facing processes for the sifting and creation of both DPA principle seven and potential s55 cases. During the next quarter, further work will be undertaken to establish clearer protocols in this regard and to provide First Contact staff with more detailed support and guidance.

Contact: Steve Eckersley

## **9. Customer Contact/Complaints Resolution**

### **9.1 People**

In Q3 we launched an initiative to dedicate our next Case Officer recruitment to the identification of 'Helpline focussed' staff. In Q4 the people we appointed began to arrive and by quarter end had largely completed their basic training and begun to add value in some important areas. By the end of April these staff will take up their Helpline responsibilities marking an important milestone for this initiative.

We were also able to support job moves for three staff in Customer Contact who wished to develop their careers into other parts of the directorate. We were pleased that our strong performance this year enabled us to do this.

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### **9.2 Service Delivery**

An extremely strong quarter across the board delivering a solid year end position:

### **9.3 Helpline**

Our Helpline service ended the year having received a 9% increase in calls compared to 2011/12. 95% of calls were answered with customers waiting, on average, for 52 seconds to speak to an adviser. Against the backdrop of further increased demand for the service we are pleased with these figures, particularly when combined with our excellent customer satisfaction research feedback described last quarter.

### **9.4 Notification**

An incredibly busy quarter as the teams build up to the implementation of the new ICE system. The quarter saw a combination of testing, training and familiarisation with the new service and the need to minimize the volume of work carried beyond the year end. We ended March with very little work to carry forward into the new financial year and in the strongest possible position to migrate to our new systems in May.

### **9.5 Written Advice**

Combined with our initiative to develop the Helpline a lot of work took place this quarter to develop our approach to handling requests for written advice. Building on the changes we made to the website in Q3, which led to a further reduction in demand for our written advice service, we also continued to refine our business processes to deliver more advice to more customers per pound spent on the service. We end the year with a very low caseload and with customers receiving their responses in half the time compared to this time last year.

### **9.6 Complaints**

We marked the end of the first year of our 'PECR reporting tool' by passing the 150,000th customer concern reported. We also completed work this quarter to more successfully align our website with other regulators who deal with PECR related public concerns. As a consequence, despite public interest in all things PECR having risen massively during the year we have been able to reduce the number of staff needed to manage the complaints and concerns raised with the ICO. This is a great example of how developing

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genuine self-service opportunities for customers can enable us to maintain high standards of customer service without increased financial investment. We have also been able to feed these complaints and concerns into our Intelligence Hub to directly support our regulatory action in this area.

For our DP and FoI complaints work we saw an increase in output from our First Contact complaints teams to keep pace with the rising demand for DP complaints this year. We also managed to deliver an increased number of FoI case closures this year, leaving our caseload in a very strong position at the end of March.

In addition to the strong performance described above we also took the opportunity to reduce our collective complaint caseloads by a further 1000 cases in Q4 thanks to a cross office effort under the leadership of the Information Rights Committee.

### **9.7 Projects**

Our main focus during the quarter was the ICE project. A huge amount of work has been undertaken by the Operations Service Delivery Group to maintain the rate of progress we need as we approach our go live date. Our next quarterly report will be looking back on the ICE implementation.

Contact: Paul Arnold

### **9.8 Complaints Resolution Team**

Not surprisingly this quarter has seen Complaints Resolution concentrate the majority of its activity to maximise our delivery at year end. In conjunction with colleagues in First Contact we handled and answered over 14,000 concerns raised by individuals about how their personal information was shared, provided or used and over 4,500 disputes about information that should or could be in the public domain. Over 95% of DP and 90% of FOI complaints are resolved within 6 months of receipt.

We have used individual complaints as a catalyst for action, and met with and discussed issues with a number of organisations across almost all sectors during the year. Issues that individuals raise are routinely shared across departments within the ICO, and cross office priority groups. Specifically this quarter we have worked to prepare ourselves for changes to the NHS structures, and we proactively approached the financial sector to explore performance in connection with requests for personal data given the rise in PPI cases and activity from claims management companies. Royal Bank

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of Scotland has committed to an improvement plan to turnaround subject access timescales and we are monitoring service delivery in this area in all of the major banks.

We also continued the ICO's programme monitoring public authorities' timeliness in dealing with FOI requests and conducting internal reviews. The Department for Education, Department for Work and Pensions, the Office of the First Minister and Deputy First Minister (Northern Ireland) and Wirral Metropolitan Borough Council were singled out for our attention and although monitoring is on-going, statistics for the first month of that monitoring period, January 2013, have begun to come in. Early indications are that performance, and therefore service for individuals is improving.

Contact: Andy Laing