



Privacy & Data Protection

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THE INFORMATION COMMISSIONER'S ENFORCEMENT STRATEGY

The Commissioner has reviewed her approach to enforcement in response to the changes brought about by the Data Protection Act 1998 (the "1998 Act") in terms of assessments casework. The Commissioner has been aware for some time that compliance casework has not resulted in a significant amount of enforcement activity. In the vast majority of cases compliance has been achieved without the need for such action to be taken against data controllers. Relying upon such casework as the only means of identifying compliance issues is necessarily reactive and does not actually reflect the various different ways in which compliance issues are brought to the attention of the Commissioner.

In fact such issues have increasingly come to the Commissioner's attention through reports in various media, through enquiries made by members of the public which do not amount to requests for assessment as well as, more generally, through 'monitoring' of external activity such as public consultation exercises, the passage through Parliament of proposed legislation and the consequences of technological developments.

The Commissioner's primary aim in reviewing her enforcement strategy is to take a more pro-active stance in terms of investigating compliance issues leading to more enforcement action being taken. To do this effectively in the context of the significant changes that her role and Office have undergone the review sought to identify the internal structure and system that might best enable the Commissioner to decide upon and manage a programme of investigation that will result in the exercise of her formal enforcement powers under both the 1998 Act and the Freedom Of Information Act 2000 (the "FOI Act").

The review has resulted in the Commissioner agreeing to the following:

1. The establishment of a panel drawn from Senior Management and to be called the **Enforcement Board**. The members of the Enforcement Board are as follows:
 - The Information Commissioner
 - Both Deputy Commissioners
 - Two Assistant Commissioners
 - The Head of Investigations

In addition, the Legal Adviser (or Deputy Legal Adviser) will attend all meetings of the Enforcement Board in an advisory capacity.

One of the primary functions of the Enforcement Board will be to identify compliance issues warranting pro-active investigation and to formulate and manage a strategic programme of investigation (for the year) with a view to consideration of formal enforcement action.

The Enforcement Board will also consider prospective enforcement activity and make recommendations to the Commissioner (or in her absence, a Deputy Commissioner) who will decide at the meetings whether or not to proceed to enforcement activity and, if so, in what way.

The Commissioner's decision to proceed is to be taken on the basis of reasonable and consistent criteria (to be developed by the Enforcement Board) as well as taking account of issues such as resources and competing priorities across the Office.

Unless the decision-making function is formally delegated by the Commissioner, her attendance (or in her absence at least one of her Deputies) at any meeting of the Enforcement Board is necessary where decisions are to be taken at such meeting.

2. The establishment of a dedicated **Enforcement Team** which will serve three primary functions, namely:
 - To carry out the programme of investigation devised by the Enforcement Board and to pursue any resulting enforcement action;
 - To identify additional areas of non-compliance that may be investigated through working closely with compliance teams. These would then be brought to the attention of the Enforcement Board for their consideration; and
 - To provide administrative support to the Enforcement Board.

The Enforcement Team will be made up of staff drawn from the Commissioner's Compliance, Investigations and Legal departments. In this way it is hoped that team members will acquire and develop new skills and practical expertise from one another.

The Enforcement Team will assist the Commissioner by enabling more thorough investigation of major compliance issues than is currently feasible. The work of the Enforcement Team will, it is hoped, better inform the efforts of the Commissioner and her staff in achieving compliance with the legislation she promotes and enforces.

The first meeting of the Enforcement Board was held on 12 July 2002. It considered, and the Commissioner decided upon, an initial programme of investigation for the remainder

of the financial year. At the same meeting the Enforcement Board discussed the appropriate resource initially required for the Enforcement Team to deal with the agreed programme.

The Commissioner has decided on two areas of investigation into non-compliance during the current financial year (i.e. up to 31 March 2003). They are as follows:

- Compliance issues arising out of the Website Compliance Study funded by the Commissioner and conducted by UMIST;
- Issues surrounding the exercise of the right of subject access (under section 7 of the 1998 Act) since 24 October 2001 to manual records held by Central Government Departments.

The Commissioner, with the Management Board, will review and decide upon the continued feasibility of the Enforcement Board and Enforcement Team structures each year after the end of the financial year and in advance of publication of the Commissioner's Annual Report. She will review progress against the Team's enforcement programme and also the annual programme itself. Further information about the respective functions of the Enforcement Board and Enforcement Team are set out in the respective appendices attached to this paper.

The Functions of the Enforcement Board

Background

The Commissioner's existing structures and systems do not easily accommodate any initiative the Commissioner may wish to take in terms of investigating and enforcing compliance with the Data Protection Principles (and in time the requirements of the Freedom of Information Act 2000) other than those the subject of complaints/casework. The formation of an Enforcement Board is intended to provide the Commissioner with a means of addressing compliance issues that come to her attention through any of the various sources identified. The Enforcement Board is intended to enable the Commissioner to prioritise and plan Data Protection and Freedom of Information compliance investigations and take effective enforcement action in relation to both on her own initiative. The Enforcement Board, it is hoped, will provide the Commissioner with the means to meet the objective of more enforcement activity.

The Enforcement Board's remit does not extend to consideration of the investigation and prosecution of criminal offences under either the Data Protection or Freedom of Information Acts. The Commissioner's existing policies and procedures remain unchanged in these respects. The successful discharge of the Enforcement Board's strategic function will, however, depend on it being aware of all investigative and enforcement action being conducted (including criminal matters) – see 8 below.

Functions

The Enforcement Board will exercise the following functions:

1. Identify Data Protection and Freedom of Information compliance issues that warrant proactive investigation/monitoring with a view to consideration of enforcement action;
2. Formulate and manage a programme of investigative/enforcement activity addressing such issues;
3. Consider whether or not the Commissioner should decide to proceed to enforcement action, and if so in what way, in respect of any particular case or issue presented to it (orally or in writing);
4. In those cases where the Board recommend enforcement action, and such recommendation is accepted by the Commissioner (or in her absence, one of the Deputy Commissioners) this will be recorded as a decision of the Commissioner (or Deputy);

5. Ensure that sufficient resource is available to carry out such investigation instituted by the Commissioner and/or such enforcement action as the Commissioner decides should be taken, and by whom;
6. Apply, keep under review and develop reasonable and consistent criteria both for and against enforcement action;
7. Advise Compliance Managers on likely stance on enforcement;
8. Ensure that all enforcement activity (including in this respect investigations and prosecutions) is recorded and monitored and, where necessary, prioritised;
9. Direct the Enforcement Team on the publicising of its decisions and action taken as a result.

The Enforcement Board

The Enforcement Board comprises the following:

The Information Commissioner
Both Deputy Commissioners
Two Assistant Commissioners (preferably one from each of private and public sector compliance)
The Head of Investigations

Unless the decision-making function is formally delegated by the Commissioner, the attendance of the Commissioner, or in her absence one of the Deputy Commissioners, is necessary in any Enforcement Board meeting at which a decision on enforcement action is to be taken.

As with the Management Board, other than the Commissioner (or in her absence one of the Deputy Commissioners), in the absence of formal delegated authority from the Commissioner, the remaining members of the Enforcement Board can only act in an advisory capacity.

The role of the Legal Adviser

The role of the Legal Adviser at Enforcement Board meetings is limited to the provision of legal advice to the Commissioner and the Enforcement Board. The role may be likened to that of a Magistrates' Clerk. As such the Legal Adviser is not a member of the Enforcement Board.

The Legal Adviser (or Deputy Legal Adviser in his absence) should attend all Enforcement Board meetings so as to advise the Commissioner and the Board on any legal issues that

may arise in the course of Board meetings and which are not otherwise addressed in written or oral reports or representations made to the Board.

Meetings

It is proposed that the Enforcement Board meet formally once a month, preferably on a fixed day each month. Such scheduled meetings are expected to last no more than two hours. Ad hoc meetings may be arranged on the basis that all decisions made in such meetings are recorded and reported to the next formal meeting.

Decisions arising out of the deliberations of the Board must be recorded and the record approved by the Board prior to circulation/publication. Minutes of formal meetings should be approved at the following formal meeting. Minutes of any ad hoc meetings must be recorded and approved by those attending the meeting in question.

Crucial to the efficient and effective operation of the Enforcement Board will be its dedicated secretariat, to be called the Enforcement Team (see Appendix 2).

The Functions of the Enforcement Team

Background

The Enforcement Team will provide a focal point for the combined and coordinated efforts of the Commissioner's Compliance, Investigation and Legal Departments to carry out the programme devised and set by the Enforcement Board to achieve compliance with the Data Protection Principles (and in time the requirements of the Freedom of Information Act 2000). It will do this by providing a continuous dedicated support team to the Enforcement Board and by conducting investigative and enforcement activity arising from the Enforcement Board's annual programme.

One of the primary objectives behind the setting up of the Enforcement Team is to broaden the Office's existing skills base in terms of investigatory practice and techniques in the area of non-compliance with the Data Protection Principles and the requirements of the Freedom of Information Act, as well as to refine and improve such skills.

Functions

The functions of the Enforcement Team are as follows:

1. To investigate those compliance issues identified by the Enforcement Board in their programme and, where directed to do so by the Board, pursue any enforcement action resulting;
2. To identify additional areas of non-compliance that may be investigated through working closely with compliance teams. These could then be brought to the attention of the Enforcement Board for consideration.
3. As well as dealing with the more pro-active workload referred to above, the Team will have an important procedural role to play in the organisation and administration of other, more reactive cases and issues referred to the Board for consideration by the Compliance, Investigations and Legal Departments. This will allow the Commissioner's existing procedures for enforcement work to be accommodated subject to them being reviewed and revised to take account of the new structures for dealing with enforcement work.
4. To provide administrative support to the Enforcement Board. This will include the organisation and administration of Board meetings themselves. The Team will be expected to collate management information on current investigative and enforcement activity and provide this to the Board to inform their deliberations. The Team will also be responsible for the keeping of records of decisions taken by the Commissioner at Board meetings, and of action taken as a result of those decisions.