

Ministry of Justice Triennial Review of the Information Commissioner's Office - Joint BBA-AFME submission

Responses were pasted into the online response tool provided by MoJ under the questions provided on 16 January 2015.

Bold text indicates text from the MoJ questionnaire.

1 With regard to the ICO's functions to enforce and oversee the following:

- **Freedom of Information Act 2000**
- **Data Protection Act 1998**
- **Environmental Information Regulations 2004**
- **Privacy and Electronic Communications Regulations 2003**
- **INSPIRE Regulations 2009**

(a) Do you consider, in relation to any or all of the above, that the provision of their services to individual users and to organisations remains necessary? Please explain your reasons for your answer.

This is a joint submission by the BBA (British Bankers' Association) and AFME (Association for Financial Markets in Europe). As associations representing financial services firms, our submission relates to the ICO's functions under the legislation that affect our members, in particular:

- Freedom of Information Act 2000
- Data Protection Act 1998
- Privacy and Electronic Communications Regulations 2003

The provision of services by the ICO in relation to these pieces of legislation is necessary and serves a number of important functions both for the financial services industry and its customers. These include in particular:

- The FAQs and guidance material published by the ICO are very useful in interpreting the broad laws that it enforces. This guidance is helpful to firms of different sizes and in different sectors.
- The ICO also serves an important purpose in the area of the interaction between data protection and compliance with other regulatory obligations. The ICO provides useful guidance on managing this cross-over and where it engages with other regulators it can help to promote a coordinated approach.

We also note that the ICO takes a largely positive approach to engagement with industry. Rather than simply focusing on its enforcement functions, the ICO engages constructively with businesses and with industry bodies. This is both through formal consultations and through informal

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engagement, such as attending industry meetings. Our membership benefits from this approach and it should continue.

Finally, we note that if and when the General Data Protection Regulation is passed by European Union institutions, businesses will need assistance to navigate their new obligations. The ICO's constructive engagement and the drafting of industry guidance will be all the more important in this new environment.

(b) Do you consider that services provided by the ICO in these areas could be improved? Please explain your reasons for your answer.

There are several areas where improvements could be made.

It would be useful to have greater visibility of communication between the ICO and other regulators, such as the FCA. It is positive that this type of engagement happens and it would be beneficial if it were to happen more, with increased publication of sector-specific guidance developed by the ICO working with other regulators.

Similarly, given the global environment of many data controllers and processors, it is important that the ICO continue and build on its outward engagement both within the EU and further abroad. Such engagement could be included in the ICO's Corporate Plan. It would also be useful for industry to have greater visibility of the ICO's engagement with overseas authorities given the often cross-border nature of data protection issues.

Another enhancement to the ICO's services would be greater use of social media and other internet tools to provide news and updates. This could include disseminating new guidance and relevant news from Europe or further abroad. See also our answer to section (c) and to Question 3.

One specific work area that could be usefully enhanced is the approval of Binding Corporate Rules. This process can take some time and we note that these instruments are likely to be of increased importance under the forthcoming General Data Protection Regulation.

(c) Do you consider that services provided by the ICO could be delivered differently? Please explain your reasons for your answer, including any examples from other regulators or comparable international bodies.

It would be useful for the ICO to increase its use of information technology in its day to day operations. As an example, currently payments for registrations and conferences must be made by cheque, which are becoming increasingly obsolete for business to business transactions. It is also difficult to make bulk registrations for conferences.

Increased use of IT would improve the efficiency of basic business practices such as these.

2 - Is the independence of the ICO best supported by reporting to Parliament or to a government department such as the Ministry of Justice? Please explain your reasons for your views.

BBA and AFME have no comments on this section.

3 - With continually changing technology, an increased use of social media and the internet, do you believe the ICO will continue to be fit for purpose?

The goals and purposes of the ICO remain valid and the growth of the internet and social media do not change this. Its core functions of educating and enabling businesses to comply with data protection laws and of enforcing these laws do not fundamentally need to change.

However, it would be desirable for the ICO to further develop the way it delivers services in the new online environment, as mentioned in our answers above.

4 - Do you have any additional comments you would like to submit as evidence to the review?

As noted under Question 1(a), if and when the General Data Protection Regulation is passed by EU institutions, the ICO will likely acquire both new responsibilities and new powers. This will have both resourcing implications and implications for how it delivers its services.

Although the details are not yet finalised, it is probable for example that the ICO will have a greater role to play in approving data processing, codes of conduct and other documents, as well as receiving and processing notifications of data breaches. It is also likely that there will be a greater need for sectoral guidance.

The ICO could also play a useful role in raising awareness of the new regime in the UK.

It is important that the ICO continues to be a forward looking organisation, and plans for the changes arising from the EU regulation as well as other regulatory initiatives that will impact industry sectors both locally and globally.