

Association of Accounting Technicians response to the Information Commissioner's Office consultation on Draft regulatory action policy

The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to this consultation.

The following paragraphs outline AAT's response to the proposals outlined in the ICO consultation paper. We have only listed those sections/questions where AAT has a comment to make.

Page 5 – Period before initial ICO contact and duration of investigations

In relation to objective 1, to respond swiftly and effectively to breaches of legislation, it would be helpful to have clarity regarding what constitutes 'swiftly'. AAT considers that the ICO's ability to respond could depend on resource availability and the volume of other ongoing cases at any given time. Reflecting further on the latter point, it would be helpful to know what the ICO's expectation is as to how many cases it can manage at any given time. Furthermore, in the absence of clarity as to what 'swiftly' constitutes, if a complaint is made to the ICO or a breach is reported and no response is received within a reasonable timeframe can the company concerned assume that the ICO is not pursuing the issue?

There are other areas where clarity would be beneficial, for example, does highly sensitive information have the same definition as special categories of personal data in GDPR and what number of individuals would constitute a large group?

Page 9 - Selecting the appropriate regulatory activity for breaches of information rights

As much as the ICO has provided clear criteria by which they will take certain actions, much appears to be left to the discretion of the ICO on a case by case basis. It would be helpful for DPOs, auditors and advisors of companies if the ICO were to provide a more transparent and less subjective points based system that shows clearly when certain thresholds are crossed and the corresponding enforcement actions against those thresholds. AAT understands that the Immigration Service operates a system like this for caseworkers handling various immigration cases. Such an approach may well be worth exploring.

This type of approach could be communicated through a worked example of the various combinations and permutations of the listed criteria that would determine an ICO response. It would be helpful to have examples of when the ICO would expect any complaint from a handful of individuals to be dealt with directly between the organisation and the individuals concerned in order to minimise the risk of companies having to manage what may be considered to be opportunistic threats or vexatious claims from disgruntled customers, being reported to the ICO.

Page 13 - A hierarchy of regulatory action

With regard to the use of audit/assessment or inspection powers, Assessment and Enforcement Notices, AAT would like to see further detail as to what would be a likely trigger for an audit. For example, it is unclear if companies that never have data protection breaches or complaints from data subjects will ever be subject to an audit or is it the ICO's intention that companies of certain sizes from specific sectors can be expected to be selected for an audit such that, over a period of years, all companies from those sectors can expect to have had an audit from the ICO?

AAT considers that this approach could take a considerable amount of time and arguably, unless the audit reviews are undertaken only in order to determine the level of non-compliance with regulation, could be perceived to bring with them an unnecessary level of bureaucracy and costs for many organisations that are unlikely to be in breach of the regulations. A risk-based methodology for identifying organisations may represent a more effective approach and is consistent with approaches taken in relation to the supervision of other regulatory frameworks.

Page 14 - Timelines for DPIA reviews by members

ICO states that it will also provide opportunities for innovative products, services or concepts to be tested with appropriate regulatory oversight and safeguards, so that innovation and development is not over-burdened.

It would be beneficial if clearer timelines including SLAs and engagement channels are specified so that this can be factored into project delivery times.

Page 16 - Insolvency and winding up orders

Where a company seeks to avoid a financial penalty through complex liability structures or by dissolution, the ICO states it will pursue matters via winding-up orders or by referral to the Insolvency Service and that the ICO has achieved success in obtaining disqualification of directors and winding-up orders to disrupt those who repeatedly break the rules, and the ICO intends to expand its work in this area.

Perhaps guidance could be provided to accountants or their representative bodies who could in turn disseminate such information, detailing situations where they should think very carefully about developing complex liability structures or dissolutions for their clients.

Introducing a streamlined service for accountants to check with the ICO whether their clients are currently under any form of investigation would be helpful for all involved parties.

Page 24 – What will be the amount of any penalty?

The addition of a penalty sum to act as a deterrent to others may prove effective in certain circumstances but more robust work needs to be undertaken to determine what the likely impact would be.

It is unclear as to how many breaches would need to have occurred before the additional deterrent portion becomes effective or whether it is the intention for the deterrent portion to continually increase until such breaches cease. Clarity around that issue would be most welcome.

About AAT

AAT is a professional accountancy body with approximately 50,000 full and fellow members and over 90,000 student and affiliate members worldwide. Of the full and fellow members, there are more than 4,250 licensed accountants who provide accountancy and taxation services to over 400,000 British businesses.

AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

Further information

If you have any queries, require any further information or would like to discuss any of the above points in more detail, please contact Phil Hall, AAT Head of Public Affairs & Public Policy at:

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