

Data Privacy and Cybersecurity

Big Tech Ally Could Advise the ICO on Enforcement Action

By: [Kelly Hagedorn](#) and [Tracey Lattimer](#)

Since 2018, the decision-making arsenal of the UK Information Commissioner's Office ("ICO") has included the Regulatory Panel, a body tasked with making independent recommendations to the Commissioner regarding proposed action resulting from breaches of data protection legislation. According to its Terms of Reference, the Regulatory Panel mainly advises on cases relating to breaches of the Data Protection Act 2018, the General Data Protection Regulation ("GDPR") and the Network Information System Regulations where a fine in excess of £5million is proposed (or where any proposed penalty is likely to cause a "*very significant financial impact*"). The Panel is responsible for considering whether proposed fines (and/or any other corrective measures) are effective, proportionate and dissuasive, and will recommend to the Commissioner a range of fines and/or corrective measures it considers appropriate in a given case.

Each Panel meeting is to be comprised of three individuals drawn from a pool of potential members: (i) a non-executive Director of the ICO's Management Board; (ii) a senior ICO employee; and (iii) an external subject matter expert. The Commissioner is responsible for appointing members to the pool and members for each meeting of the Panel will be "*selected based on the areas of expertise required to consider the case and panel member availability.*"

The ICO has not published a list of the individuals appointed to the pool of external subject matter experts. It has recently emerged, however, that at the beginning of this year the Commissioner appointed Bojana Bellamy, the President of the Centre for Information Policy Leadership ("CIPL"), to the pool. CIPL is a global privacy and data policy think tank based in Washington, DC, Brussels and London. According to its website, CIPL "*works with industry leaders, regulatory authorities and policy makers to develop global solutions and best practices for privacy and responsible use of data to enable the modern information age.*" Both CIPL and Ms. Bellamy appear to be pro-big business. Amongst CIPL's funders are the major global technology companies. Earlier this year, Ms. Bellamy was quoted in Politico as having said "*The purpose of the regulator is not to actually fine and enforce... We're having sort of strange conversations around GDPR. We think that in order for GDPR to work, we must see enforcement. In order for regulators to be good regulators, they must enforce and impose big fines. I would say we are completely wrong.*"

The potential presence of a Big Tech advocate on the Regulatory Panel could be a welcome development for businesses, as it may result in a more commercial approach to enforcement, and therefore smaller fines and less intrusive additional penalties being imposed for breaches of data protection legislation (although ultimate decision-making power rests with the Commissioner). To date, it appears that the Panel has yet to meet and consider any cases.

In contrast, in the EU, the European Data Protection Board ("EDPB") may be called on to review the draft enforcement decisions of EU data protection authorities (in circumstances where another EU data protection authority has raised an objection to the decision). The EDPB is an independent European body that contributes to the consistent application of data protection rules throughout the EU. It is composed of representatives of the EU data protection authorities and the European Data Protection Supervisor (the EU's independent data protection authority). In the past year, the EDPB has twice required the Irish Data Protection Commission to increase the fines it proposed to impose on social

media companies following breaches of the GDPR.

The potential presence of individuals such as Ms. Bellamy on the ICO's Regulatory Panel may be a welcome development for big business, in that it may result in a more commercial approach to enforcement, and to more lenient penalties being imposed by the ICO. However, that advantage may be somewhat diluted by the effect of Brexit. Now that the UK is outside of the EU, it is no longer part of the "one stop shop" mechanism provided for by the GDPR. Organisations based in both the EU and the UK could now face regulatory action resulting from a breach of the GDPR from both the ICO and an EU data protection authority, potentially resulting in multiple fines and penalties. We are yet to see the full impact of both of these developments, and there is certainly a lot more uncertainty to come.

Contact Us



Kelly Hagedorn

khagedorn@jenner.com | [Download V-Card](#)



Tracey Lattimer

tlattimer@jenner.com | [Download V-Card](#)

Meet Our Team

Practice Leaders

David Bitkower

Co-Chair

dbitkower@jenner.com

[Download V-Card](#)

Madeleine V. Findley

Co-Chair

mfindley@jenner.com

[Download V-Card](#)
