



An Coimisiún um
Chosaint Sonraí
Data Protection
Commission

DPC Inquiries Committee

Terms of Reference and
Related Operational Considerations

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1. Purpose and Scope of the Committee

- 1.1 The primary purpose of the Data Protection Commission (DPC) Inquiries Committee (the “Committee”) is to make decisions on:
- i. The commencement of inquiries under either Section 110(1) or 123(1) of the Data Protection Act 2018 (the “Act”);
 - ii. The accountability and assignment of resources for conducting any inquiry that has been confirmed under i above.
- 1.2 The Committee may also make other decisions related to inquiries or provide specific direction, such as, but not limited to, the following examples:
- The basis for an inquiry, under Section 111/124 (own volition) or Sections 112/113/125 (complaint-based);
 - The type of inquiry (and the procedures to be followed) having regard to the discretion provided for in section 110(1) of the Act and to be exercised by reference to the background to the matter the subject of the inquiry;
 - The commencement of an EDPB strategic inquiry where a case for which the DPC is LSA has been nominated by another Data Protection Authority (DPA);
 - The conversion of an existing inquiry into an EDPB strategic inquiry;
 - The deferment or de-prioritisation of an existing inquiry;
 - The suitability of an alternative approach for a given matter, which may include the exercise of powers;
 - The commencement of an investigation under Section 110(2)(b) of the Act;
 - Initial handling of any complaint that the DPC receives from a non-governmental organisation (NGO), including under Article 80(2), and particularly on the approach to be adopted by the DPC in engaging with the NGO.
- 1.3 The Committee’s scope includes decisions on both cross-border and non-cross-border inquiries to be commenced under the General Data Protection Regulation (GDPR). Its scope also includes decisions on inquiries commenced under the Law Enforcement Directive.
- 1.4 The Committee will not consider proposals for inquiries unless they are either of a large scale, or the issues of concern pose a high risk to data subjects, or the inquiry would be aligned with current DPC strategy such that it would further the DPC objectives or the issues of concern have been nominated by another DPA for an EDPB strategic inquiry.¹ This includes matters that may arise in relation to the technology platforms for which the DPC is Lead Supervisory Authority, or significant matters arising from GDPR Mutual Assistance requests. The Committee’s scope does not include

¹ The Committee makes decisions about inquiry proposals from across the DPC but not about cross border complaint procedures that become inquiries where amicable resolution was not successful. These types of complaint inquiries are notified and recorded by the Committee and may be brought forward to an EDPB Article 60 stage, but do not follow the assessment or approval process that other inquiries handled by the Committee do.

investigations to be commenced under the e-Privacy Regulations (S.I. No. 336 of 2011), given that these are generally on the basis of a specific complaint.²

- 1.5 N.B. The terms “decisions” and “decision-making” within these Terms of Reference generally refer to the work of the Committee in evaluating and setting direction on the commencement of inquiries. This usage is entirely distinct from the use of the terms “decisions” and “decision-making” as they relate to the statutory decision-making by the Commission under Sections 111, 112, 113, 124 and 125 of the Act.

2. Membership and Attendees

- 2.1 The members of the Committee are as follows.

Member	Role	Duties
Tony Delaney	Decision-Maker	<ul style="list-style-type: none"> Deputy Commissioners with accountability for conducting of inquiries; Collective decision-making by consensus on commencement of inquiries; Individual decision-making on capacity and capability of own inquiries unit to commence and complete each specific inquiry; Updating Convener on potential inquiries for agenda items.
Fleur O'Shea	Decision-Maker	
Sandra Skehan	Decision-Maker	
Cian O'Brien	Decision-Maker	
Helen Dixon	Commissioner/Decision-Maker	<ul style="list-style-type: none"> Advisory; Collective decision-making by consensus on commencement of inquiries; Attendance depends on availability.
Ultan O'Carroll	Convener of Committee	<ul style="list-style-type: none"> Convening Committee meetings; Efficient and effective functioning of the Committee; Wider operational context and improvements required for the Committee to be effective.

- 2.2 Other standing attendees of Committee meetings are as follows.

Attendee	Role	Duties
Dale Sunderland	DPC Senior Management Committee (SMC) member	<ul style="list-style-type: none"> Potential proposer of inquiries; Updating Convener on potential inquiries for agenda items; Owning actions agreed by Inquiries Committee related to functional area;

² A proposal for inquiry may be made to the relevant Deputy Commissioner for approval by him or her if the proposed inquiry does not fall under section 1.4.

		<ul style="list-style-type: none"> • Attendance depends on availability.
Graham Doyle	DPC SMC member	<ul style="list-style-type: none"> • Potential proposer of inquiries; • Updating Convener on potential inquiries for agenda items; • Owning actions agreed by Inquiries Committee related to functional area; • Impact to communications from Committee's outputs and decisions; • Attendance depends on availability.
Kate Fitzgerald	Secretary to the Committee	<ul style="list-style-type: none"> • Draft agenda preparation on rolling basis; • Preparation and readiness of standard inputs on existing current and previous inquiries; • Compilation of proposals for specific inquiries from proposers; • Meeting logistics and circulation of papers; • Minutes and internal communications of Committee decisions and directions.

2.3 Other attendees of Committee meetings are as follows.

Attendee	Role	Duties
DPC Heads of Unit and other DPC attendees as needed (generally those with responsibility for the matter <u>to date</u>)	Proposer of Inquiries	<ul style="list-style-type: none"> • Updating Convener on potential inquiries for agenda items; • Readiness and completeness of inputs to Committee's decision on specific inquiry; • Execution of Committee's decision on specific inquiry.
DPC representative on Enforcement sub-group (attendance is on an as needed basis)	Representative of DPC position at Enforcement sub-group	<ul style="list-style-type: none"> • To advise the Enforcement sub-group of the DPC's Decision on any proposals received from other DPAs for EDPB strategic inquiries where the DPC is the LSA.

3. Scheduling of Meetings

3.1 Meetings of the Committee are scheduled to take place every two months. They can also be scheduled on an as-needed basis, depending on the number and complexity of the proposed inquiries due for consideration, as well as the urgency of any of the proposed inquiries.

- 3.2 Notice of Committee meetings is provided as far in advance as possible but the urgency of some proposed inquiries may curtail this notice period.
- 3.3 The draft agenda is circulated with the notice of the Committee meeting and is finalised at the meeting itself.
- 3.4 Meetings will be held in person, by video or telephone conference as far as possible. Written procedure may also be used in cases of urgency where group meeting is not possible or for minor matters (and where agreed by decision makers).

4. Quorum

- 4.1 A quorum requires that four of the five Decision-makers are in attendance for the meeting, whether in person, by video conference, by phone conference or by written procedure.
- 4.2 If the Convener is not available, another Committee or SMC member will take on the role for that meeting.
- 4.3 If the Secretary is not available, a substitute will be appointed for that meeting.

5. Inputs to the Committee

- 5.1 There are two key types of inputs: 1) proposals for potential inquiries, and 2) standard summary report on all current and previous inquiries.
- 5.2 For type 1) above, the proposal for a specific potential inquiry is prepared by the main proposer of that potential inquiry using the Inquiry Proposal Template, as approved by the Committee. The template outlines the typical information which should be provided in a proposal for an inquiry, whether written or verbal. Guidance notes are provided within the template. For proposals to convert an existing inquiry into an EDPB strategic inquiry the documentation that has been submitted to the Enforcement sub-group proposing the IE SA case as an EDPB strategic inquiry is sufficient as an input to the Committee in place of an inquiry proposal.
 - Every proposal for an inquiry should ideally be circulated in writing to the Committee in advance of the meeting; however, the written proposal can be updated again before or at the meeting so that the Committee is basing its decision on the very latest information and analysis. In urgent circumstances, a proposal can be provided verbally at the Committee meeting, with a written proposal summary provided after the meeting.
 - Every proposal for an inquiry should be cognisant of existing work undertaken by members of the Inquiries Units and of Consultation units to avoid duplication of effort across teams.
 - A proposal for an inquiry is generally prepared by the unit that has had responsibility for the matter **to date**. However, in preparing the proposal, it may be useful to collaborate with the relevant Inquiries Unit that would be likeliest to be assigned the inquiry, if approved for commencement.

- Every proposal for an inquiry **should be as short and succinct as possible**, while still being explicit on the recommendations that the proposer is making, for example, with references to the anticipated content of the inquiry's commencement notice.
- 5.3 For type 2) above, the standard summary report on all current and previous inquiries is compiled by the Committee Secretary, based on the case management data stores used by DPC inquiries units. It includes standard summary information on each inquiry, as well as information on the current status of each inquiry.
- Information on previous inquiries is needed to consider the precedential value of a proposed inquiry, the relative complexity and possible duration of a proposed inquiry, and the relative seriousness of the potential infringement proposed for inquiry;
 - Information on current inquiries is needed to consider the existing pipeline of inquiry work and the capacity of the organisation to commence the proposed inquiry.
 - As the Committee may be convened at relatively short notice, this standard summary and status information needs to be compiled as quickly and as automatically as possible. Therefore, the Committee Secretary will ensure the report is available and compiled on a monthly basis.
 - An inquiry is considered to have become a "previous" inquiry once a decision has been issued under Sections 111, 112, 124 or 125 of the Act.
- 5.4 In addition to the two key types of input outlined in paragraphs 5.2 and 5.3 above, the Committee may also be presented with other materials, including for items that fall under the scope of paragraph **Error! Reference source not found.** above; for example:
- An interim update on a matter that is potentially to be proposed for inquiry at a later Committee meeting, so that the Committee can give direction if needed;
 - Updates on a for-information basis on existing inquiries and investigative work;
 - Proposed approach to engaging with an NGO from whom the DPC has received a complaint.
 - Other matters of significant interest in relation to inquiries requiring discussion.
- 5.5 The draft agenda is also a standard input to Committee meetings, and is issued by the Secretary in advance of the meeting.

6. Decision-Making

- 6.1 Decision-making of the Committee is by consensus of the Decision-makers, as far as possible.
- 6.2 Decision-making of the Committee mainly focuses on:
- i. The commencement of inquiries under either Section 110(1) or 123(1) of the Act;
 - ii. The accountability and assignment of resources for conducting any inquiry that has been confirmed under i above.
- 6.3 For decision type i above, the Committee considers both of the two key inputs outlined in section 5 above; that is, both the proposal for the potential inquiry and the standard summary report. Factors that are taken into account include, but are not limited to, the following:

- Seriousness of the potential infringement;
- The scale of processing of personal data;
- Concerns of a high risk to data subjects;
- Data protection issues which may become apparent in relation to the technology platforms for which the DPC is Lead Supervisory Authority;
- Significant matters arising from GDPR Mutual Assistance requests;
- Complexity of the case and the potential inquiry;
- The operational impact of the number of complaints associated with the potential inquiry;
- Extent to which the outcome of the inquiry could increase legal certainty related to particular rights, obligations and contexts;
- Extent to which the inquiry maps to the DPC's regulatory priorities, to be defined by the future Regulatory Strategy;
- Extent to which the inquiry maps to the priorities of external stakeholders, such as European Data Protection Board members;
- Extent to which a sustainable outcome could be achieved via alternative regulatory action, for example, complaint-handling, application of powers outside the bounds of an inquiry, and so on;
- Potential issues and risks in the DPC achieving a sustainable and defensible outcome from the inquiry.

6.4 If a proposed inquiry is confirmed for commencement by the Committee under i above, the Committee then moves on to consider decision type ii above, again taking both of the two key inputs into account. The focus of this decision is to identify the Deputy Commissioner/ Inquiries Unit to whom the conduct of the inquiry is to be assigned. No decisions will be made to allocate an inquiry to a Deputy Commissioner unless that Deputy is present or represented by a Director. Factors that are taken into account include, but are not limited to, the following:

- Subject matter of the inquiry to be commenced, with respect to the Inquiries Unit's core areas;
- Existing pipeline of inquiries and other work;
- The capacity and resources available to the Inquiries Unit;
- The formal appointment of the Deputy Commissioner and lead investigator(s) to whom the conduct of the inquiry is to be assigned;
- For cross-border cases, whether the inquiry might be suitable for a Joint Operation under Article 62.3 of the GDPR;
- For cross-border cases where the inquiry is being commenced as an EDPB strategic inquiry, whether resources will be made available by CSAs to contribute to the inquiry;
- Downstream capacity impact related to decision-making, cooperation and consistency mechanism, potential appeals, and so on.

- 6.5 The Committee may also make other decisions related to inquiries or provide specific direction, such as, but not limited to, the following examples:
- The specific approach of an inquiry, for example, whether on an own volition or complaint-based basis and the procedures to be followed;
 - The potential consideration of interested parties to an own-volition complaint;
 - The deferment or de-prioritisation of an existing inquiry;
 - The suitability of an alternative approach for a given matter, including the exercise of powers;
 - The potential applicability of Section 135 of the Act to a specific inquiry;
 - The commencement of an EDPB strategic inquiry;
 - The commencement of an investigation under Section 110(2)(b) of the Act;
 - Initial handling of any complaint that the DPC has received from an NGO, including under Article 80(2), and particularly on the approach to be adopted by the DPC in engaging with the NGO.

7. Outputs from the Committee

- 7.1 The main output from each Committee meeting is a set of draft minutes which includes the details of the decisions made and directions provided for items falling under paragraph **Error! Reference source not found.** above. The final agenda, as confirmed at the meeting itself, is also issued with the draft minutes.
- 7.2 Outputs from the meeting are issued to Committee meeting attendees in the first instance, and are then subsequently posted on the DPC Info intranet site, for DPC-wide reference and confidential internal use only.
- 7.3 Once an inquiry itself has been formally commenced, following a decision of the Committee, there are further outputs associated with the commencement that are the responsibility of the lead investigator; for example, the commencement notice, the summary notice for the EDPB IMI system if needed, points of information for the DPC Communications team in case of queries, and so on.

8. Terms of Reference Review Cycle

- 8.1 These Terms of Reference were reviewed and confirmed by the Inquiries Committee on 08/12/2022, and are effective from that date.
- 8.2 These Terms of Reference will be reviewed, amended and re-confirmed on an annual basis or as required to facilitate necessary changes, taking account of factors such as the efficiency of the decision-making process and the effectiveness of communications on the Committee's decisions to the rest of the DPC.