

Governance Models

Considerations for the Data Protection Commission
(DPC)



Executive Summary

The request for this report emerged as a result of the Minister of Justice's decision to appoint a three-person Commission at the Data Protection Commission (DPC). The decision followed the Government's commitment to ensure that the DPC can best deliver on its responsibilities, specifically with the increased working burden and investigative complexity that has been highlighted in recent years by the Commission and its stakeholders.

This report outlines several Corporate Governance Models that could be effective with this new Commission structure, based on a rigorous methodological approach (see Slide 4) applied by our team of specialists. These Governance Models have been developed keeping in mind that the DPC is one of the most impactful and one of the most scrutinised data supervisory authorities in Europe and one with an extensive reach and influence. Each Governance model highlights the risks, the opportunities and the considerations that are unique to each framework.

The aim of this report is to provide several considerations of Governance Models that would be effective in sustaining the current agility and high standards of data protection from the DPC. The team have also provided some further considerations for the DPC to implement in order to promote and sustain good Corporate Governance.

Seeing as the DPC have complete independence on how they choose to govern their organisation, this report serves to highlight different approaches to governance and support the Commissioners in making the most effective decision for the DPC to continue operating in an agile manner.

Scope & Approach

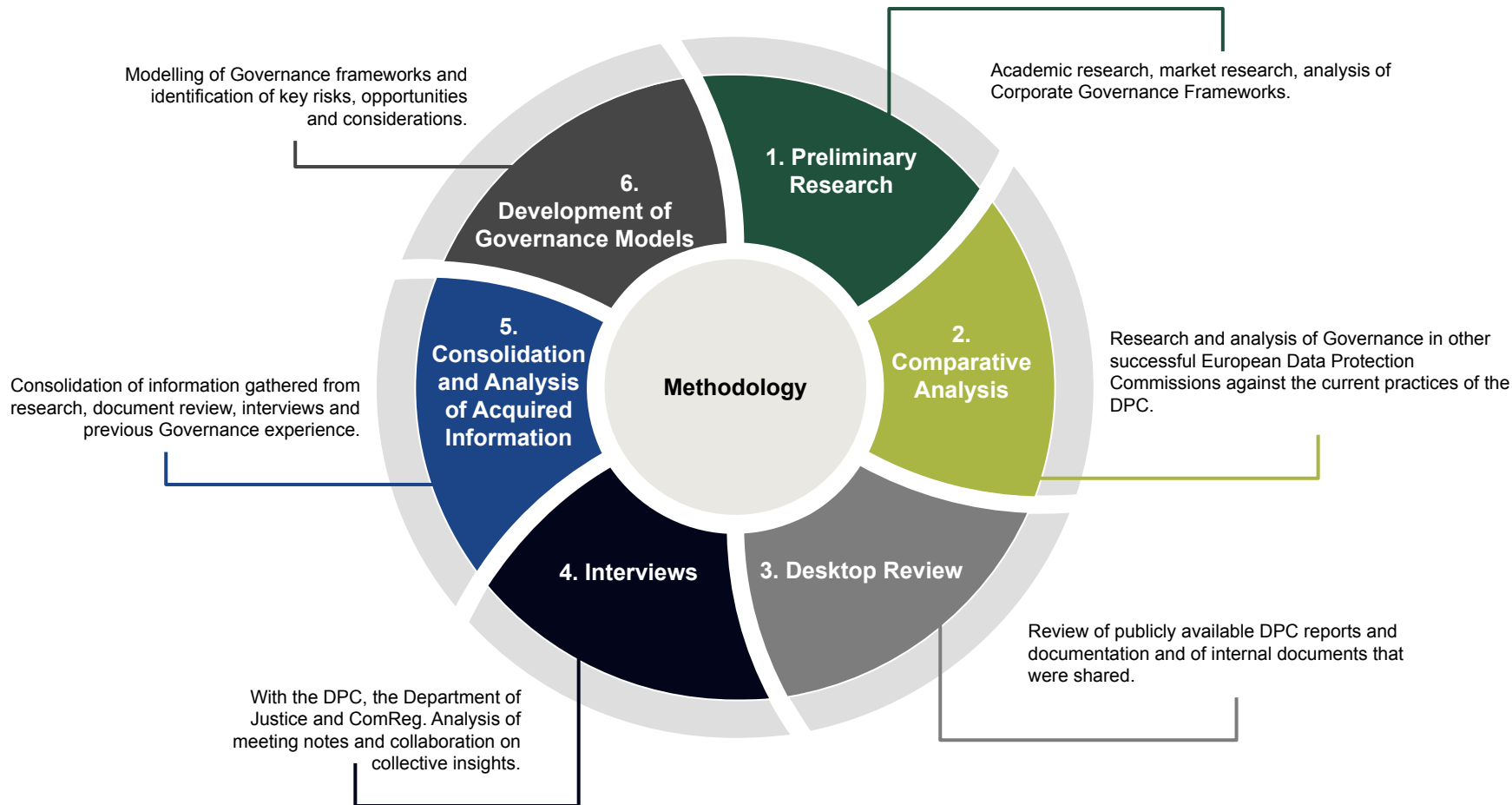
The initial request from the Minister of Justice, Helen McEntee, was to conduct a review of the Data Protection Commission (DPC) governance structures, staffing arrangements and processes in order to elucidate how a three-person Commission could operate successfully, following the announcement made by the Government on the 27th of July, 2022. This request has been undertaken with the predetermined output of defining the operational arrangements necessary to support a three-member Commission at the DPC.

With the time and budget allocated to this report, an in-depth review of the governance structures was conducted to support the work of an additional two Commissioners. The review of corporate governance for the DPC comprised the following elements:

- Academic and market research
- A comparative analysis of the DPC's Governance practice with other Data Protection Authorities in Europe
- A desktop review of the DPC's various publications including annual reviews, internal audits, existing corporate governance practices, committees and their terms of reference, regulatory documents and relevant legislation. Documents reviewed are included in Appendix B.
- Interviews with the DPC
- Interview with the Department of Justice
- Interview with Communication Regulation Authority (ComReg)
- Development of Governance models with identified risks, opportunities and considerations for each
- Recommendations for sustained good Governance

This report does not include a review of the adequacy and effectiveness of the DPC's current governance model. The assessment report does not identify one proposed Governance model but rather presents options for consideration. There may be other models outside of this report that the DPC and Department of Justice wish to consider.

Methodological Overview



01

Preliminary Research

We first approached this report by conducting in-depth research on Corporate Governance best practices per published research articles. This research explored different approaches to models of Governance including risk-based approaches, organisational approaches, system-level approaches and planning and control models.

The team reviewed established good Governance Principles and analysed several frameworks for assessing good Governance practice, prioritising acting in the public interest at all times. Other frameworks that were analysed considered linking corporate and key assets to Governance practices.



02

Comparative Analysis

The team researched and analysed Governance best practices for data protection as demonstrated by other successful European Commissions in order to conduct a comparative analysis. The comparative analysis consisted of analysing the status and the composition of each Commission, their strategic roadmaps, their organisational structures, their decision-making structures, their Key Performance Indicators (KPIs) and all available documentation on Governance. The research informed the Governance models by highlighting key practices and processes that have been thoughtfully incorporated into the framework options and in our recommended next steps for the DPC.

This information was then compared with publicly available information on the DPC, including all published reports so that we could identify areas of opportunity to sustain good Governance during the transition period from one Commissioner to a three-person Commission.



03

Desktop Review

Subsequently, we completed a desktop review of publicly available DPC reports and documentation and of internal documents that were shared with the team. Notes were taken on each document and the team met on a regular basis to discuss their findings, insights and opinions.

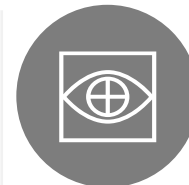
A list of the documents reviewed are listed in Appendix B.



04

Interviews

We conducted several interviews with the goal of gaining a deeper understanding of the DPC's business processes and ways of working. In order to obtain a holistic view of the decision to move to a three-person Commission and the implications of this decision, the team interviewed the current Data protection Commissioner, three Deputy Commissioners, held an interview with the Department of Justice and with ComReg (see Appendix A for further details).



05

Consolidation of Information

The team drew on academic research, market research, previous corporate Governance experience and insights from the interviews with the DPC and the Department of Justice to put forward these Governance model options, taking into account the specific context and nature of the work carried out by the DPC. The Governance models were created in an iterative, collaborative manner with the inputs of Governance subject matter experts.



06

Development of Governance Models

After the consolidation of large amounts of documentation and information, the team worked to identify key risks, opportunities and considerations for each Governance model. As such, the DPC can easily identify important aspects of each model and decide which one will be the most effective for them to employ.



Navigating this Document



Purpose

The purpose of this report is to provide considerations for incoming Commissioners to support their decision as to how they would like to govern and structure the DPC under a three-person commission, while preserving and enhancing good Governance practices.

Approach

Based on interviews and document review (see Appendix A, Appendix B and Appendix C) and our knowledge of and insight into Governance practices, we have developed a series of potential models which capture key components and considerations to the development of the high level governance structures for the DPC.

How to use the Models

As there are many possible permutations of Governance frameworks, we have sought to present a series of four illustrative models which capture key components respective to each model based on Governance approaches we have seen adopted, enabling the analysis of key risks, opportunities and considerations for the future Governance model of the the DPC under three Commissioners.

Overarching Considerations

Current Landscape



The models proposed in this document take into consideration that the DPC has now been mandated to monitor the application of the pan-European General Data Protection Regulation; That the DPC acts as the supervisory authority for personal data processing under several additional legal frameworks; and that the DPC are subject to twenty more pieces of legislation concerning the processing of personal data where they must play a supervisory role.

Considering the workload and complexity of the work that the DPC is undertaking, these Governance Models should be considered under the guise that employees may need to be regraded. This is based on the research conducted, on benchmarking with other Commissions, which has been reflected in the interviews and in previous audits.

Through interviews with the DPC, it would appear that there is a strong and healthy organisational culture that should be preserved through these changes to Governance. The team has thoroughly considered how the call for two additional Commissioners may help support the DPC's continued success as one of the leading data protection supervisory authorities in Europe.

Transition Considerations



Regardless of which Governance Model is implemented, there is going to be an inevitable period of transition which may initially set back the work of the DPC and cause delays in resolving cases. That said, with regards to long-term sustainability, a three-person model may promote good governance principles by creating more distributed decision-making. A three-person Commission may create a network of support where multiple voices will aid complex decision-making. This is also an opportunity for a more distributed workload and more effective management concerning the growing scale of operations.

Overarching Considerations Cont.

Communication and Engagement



As with any leadership team, there are risks and opportunities surrounding the interpersonal relationships of the Commissioners with each other and the rest of the DPC. We have taken this into consideration including how a three-person Commission may affect decision-making and Governance practices. We note that it will be essential for the Commissioners to have frequent communication with one another and meet daily in order to ensure they are aligned and operating as a functional unit, regardless of the Governance model that is selected. This is likely to promote higher levels of engagement at the Commissioner-level which will also encourage higher engagement throughout the rest of the organisation.

Final Considerations



The interviews with both the DPC, the Department of Justice and Comreg have highlighted that the DPC is operating at a very high standard and is performing well. Seeing as the organisation is functioning at this high standard, this is something that we have sought to conserve in the Governance models.

Seeing as the DPC operates as an independent entity, ultimately, the three Commissioners will decide on which Governance Model is the most suitable to ensure the continued effectiveness and agility of the organisation. Ultimately, resilience in multiple Commissioner models is notable and we believe that the DPC will see continued success.

Overview of Governance Models

02

Dedicated Streams Model

03

Supported Leadership Model

01

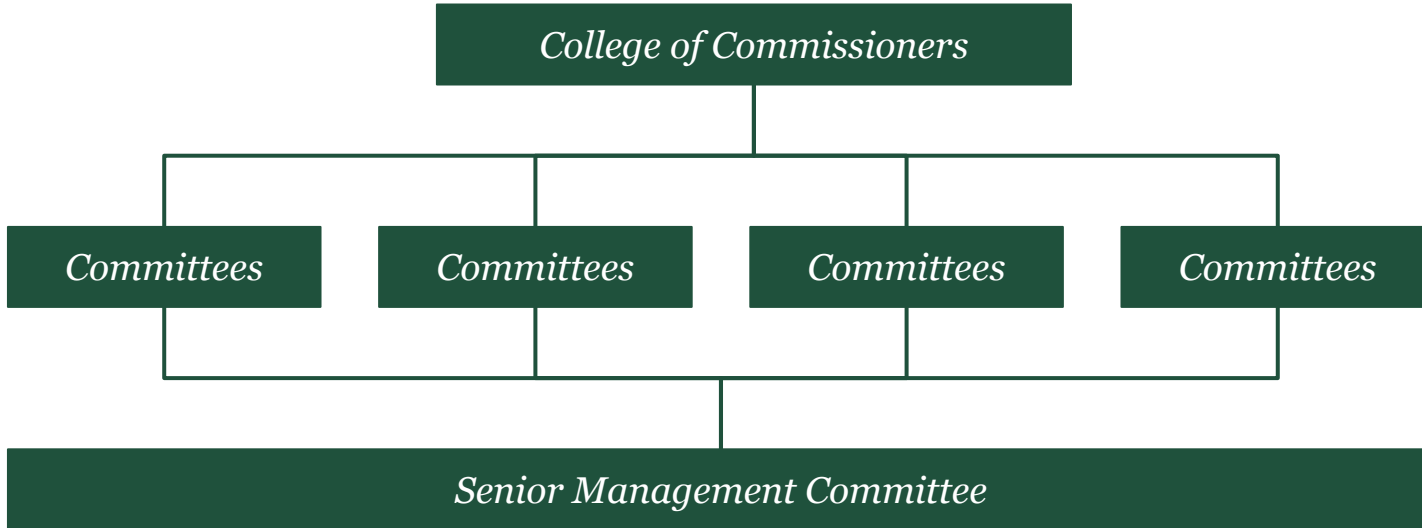
Classic Governance Model

04

Board Directorate Model



* Please note that these models are not presented in any particular order of preference.



Risks

Time Consuming: Having three Commissioners who act as a Board and engage in collective decision-making may be more time consuming and cause disruptions to the current processing of cases.

Friction: The Commission will likely need to follow a 2 to 1 vote, which may cause friction when opposing views arise.

Organisational Design: Employing this model may require an organisational redesign to create committees or appoint individuals to bridge the management gap between Commissioners and Deputy Commissioners. It may also require an evaluation of human capital and the DPC's ability to meet their business requirements.

Opportunities

Accountability: May promote collective accountability.

Best Practices: This model has also been adopted by several large and small companies, meaning the DPC may leverage lessons learned from these entities.

Consistency: Considering the move to a multi Commissioner scenario, this model ensures formal decision-making protocols to promote consistency, to promote fairness and create greater support at the (multiple) Commissioner level and at the SMC level. Seeing as Data Regulations are principles based, in the context of collective decision-making, this prompts high levels of consistency.

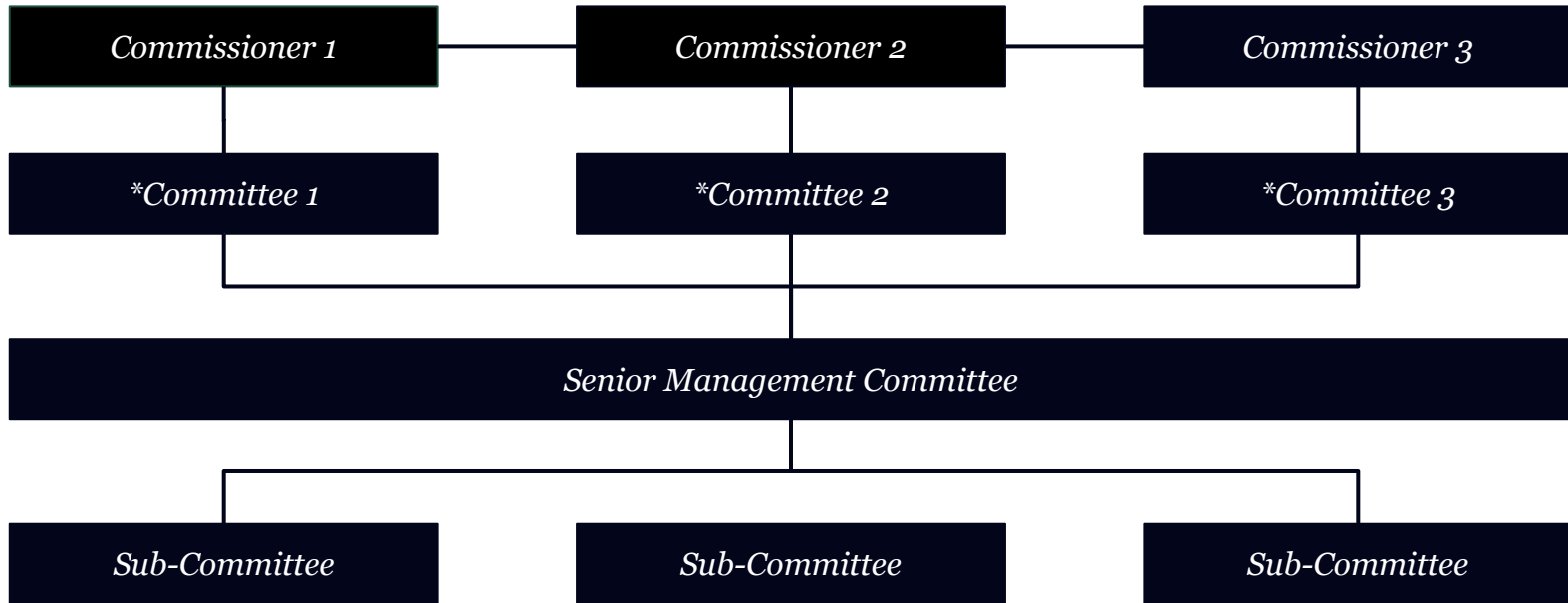
Considerations

This model is similar to the current corporate governance structure of the Garda Ombudsman (GSOC).

This model creates a governance layer between the Commissioners and the SMC, seeing as the sub-committees support the Board directly. The DPC may choose to employ Committees or instead, may prefer to appoint specific individuals. Should the latter be the DPC's decision, there may need to be changes made regarding resource allocation and staffing.

With regards to the Committees, the DPC will need to consider (1) Their scope and purpose, (2) Commissioner membership, (3) Involvement of DPC Senior Management and (4) How these relate and work with the SMC as well as how these Committees may impact the scope and purpose of the SMC.

* Each Committee is dedicated to the particular functions and responsibilities of each respective Commissioner.



Risks

Inconsistent Decision-making: May cause inconsistencies in the way the organisation makes decisions.

Members of the SMC may feel out of touch with the issues or cases that are being handled by each Commissioner and their respective Committee risking the effectiveness of the SMC and the consistency of decision-making below Commissioner level.

Competition: May lead to competition amongst the Commissioners for resources, rather than working collectively to achieve the DPC strategy.

This 'divide and conquer' mentality may take away from our understanding of the current company culture of inclusivity and consensus decisions as the norm.

Obstacles in achieving goals: May make the setting, the strategy and agreement of related plans and objectives more challenging.

Opportunities

Diversity of Thought: May promote greater debate and discussion on enterprise wide topics. This model may also result in a more rigorous approach to decision-making.

Consistency and Accountability: May promotes consistency in individual decision-making. May promote individual accountability, both internally and to external stakeholders.

Time Saving: May streamline decisions if each Commissioner works independently, thus increasing the speed of decision-making. The dedicated committees to each commissioner may also streamline workflow, improving time management.

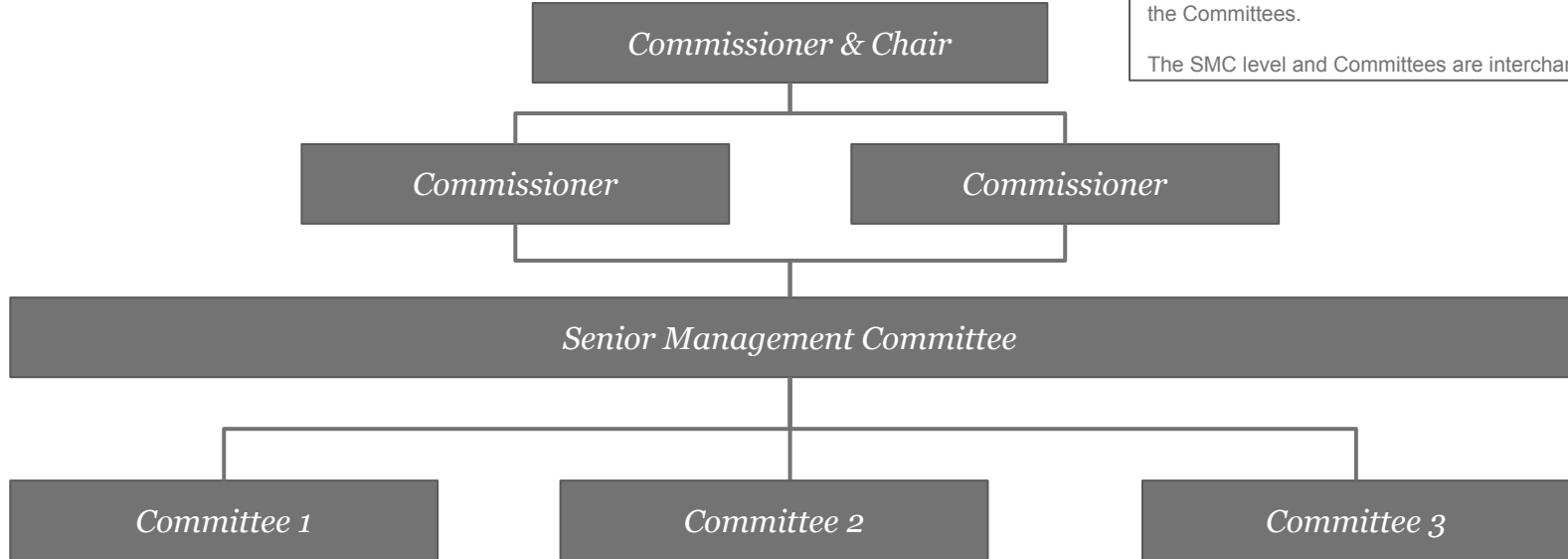
Considerations

Dividing the Commissioners and assigning them different areas of responsibility could create friction at the top of the organisation and may add some level of scrutiny from the public and the media. The notion of having a team of Commissioners working together is likely to be more widely accepted and welcomed than having each Commissioner work in silos.

That said, having dedicated Committees assigned to each Commissioner's line of service may support the organisation's workflow and accountability. Any major inconsistencies could then be reviewed by the SMC.

Legislative change may be required if this is the preferred model.

*Depending on the nature of the work the DPC is undertaking, they may opt to have the Committees sit directly under the Commissioners and the SMC under the Committees.
The SMC level and Committees are interchangeable.



Risks

Friction at Commissioner Level: The Commissioners who are not appointed to Chair may not want to have a 'Chief' Commissioner to be the final decision-maker causing interpersonal issues within the Commissioners.

External Scrutiny: This model may make the DPC vulnerable to scrutiny from external stakeholders as to how this will better support the Commission to process cases, given its similarity to the current model.

Opportunities

Business as Usual: The model most resembles the current Corporate Governance of the DPC, meaning there may be less disruptions to current processes.

Time Saving: Assigning the Chair Commissioner as the ultimate decision-maker may streamline decisions.

Long-term Sustainability: This model may support the Code of Practice for the Governance of State Bodies (2016) in achieving the sustainable success of the organisation over the longer term, because while the Commissioner Chair is the ultimate decision-maker, there are two additional competent Commissioners to step-in, should the Chair need to take absence or in the case of unforeseen events.

Accountability: Provides for the Chair to be the accountable face of the DPC to Government and external stakeholders.

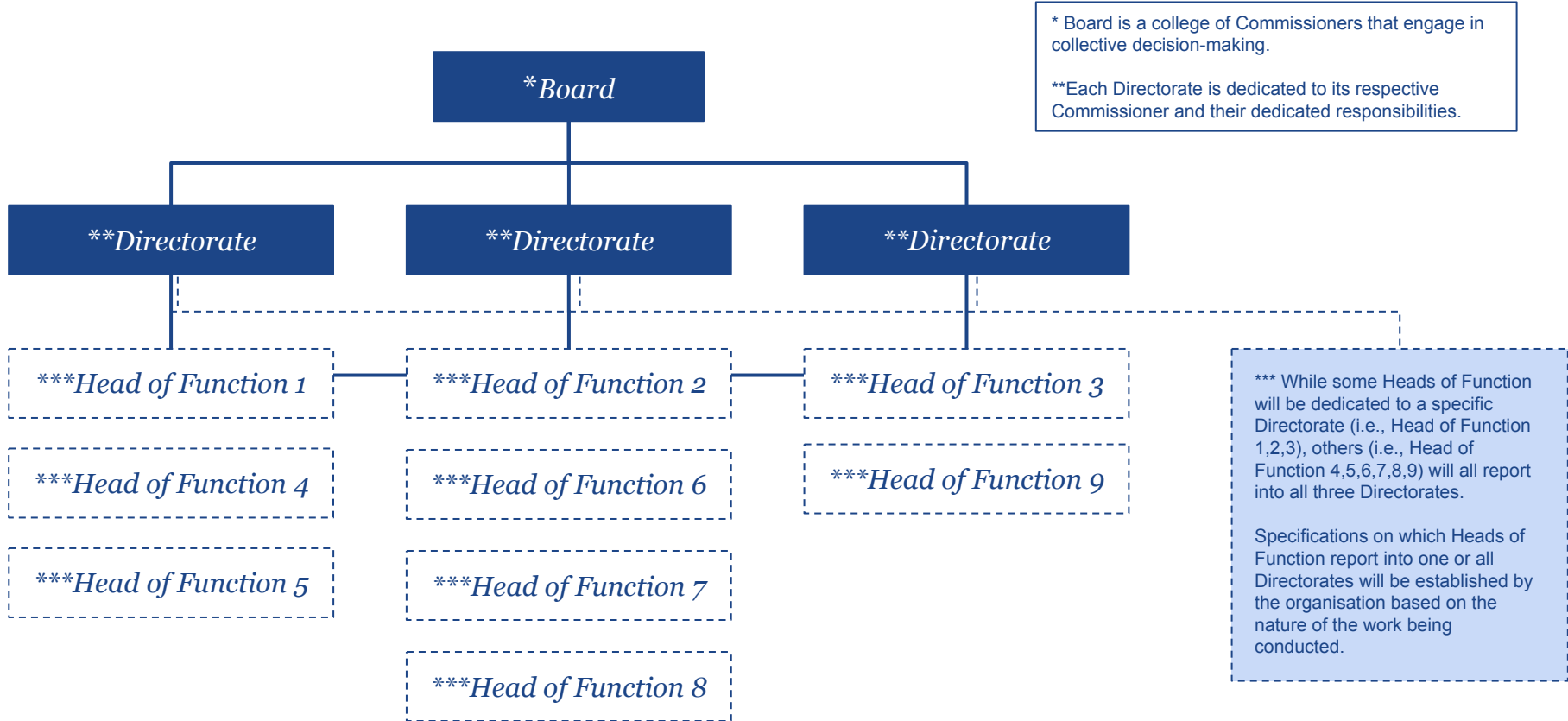
Considerations

The Revenue Commissioners employ a similar model, where there is a Commissioner and Chair, with two Commissioners sits the Revenue Board, which is similar in this model to the SMC.

This model is also similar to the Governance model in place at the Department of Public Expenditure and Reform, where a Minister sits at the top of the organisational chart with a Secretary General/ Accounting Officer (the equivalent to Head of a Department) reporting to the Minister and 'Special Advisers' reporting into the Secretary General.

In the absence of the Commissioner Chair, the DPC will need to delegate authority to one of the two Commissioners, or both, but this will need to be very clearly defined as to not disrupt the workflow.

Quorum would need to be established. If the quorum is decided to be two of three Commissioners in agreement including the Chair, the Chair's view will always 'win'.



Risks

Competition: As per model 2, could also lead to competition between Commissioners.

Inconsistent Decision-Making: Having separate Directorates that are assigned to specific streams of the business could create inconsistencies in the DPC's overall approach to decision-making and take away from the current collective and collaborative approach to problem-solving.

Friction at Directorate Level: Members of each respective Directorate may feel as if they should also be included in the Board. Finding an effective way to allocate resources to the Board and to the Directorate in a fair manner will be difficult and may cause tension between staff members.

Opportunities

Sustainable Long-Term Success: This model would help support the Code of Practice for the Governance of State Bodies (2016), in that a Board or College of Commissioners would likely help support the sustainable success of the organisation over the longer term, rather than relying on one sole individual as the final decision-maker.

Leveraging Expertise: This model may help ensure that each Deputy Commissioner's expertise is funneled to each Commissioner and to particular areas of the Commission based on experience and expertise.

Distributed Decision-Making: Support Because there is a Board leading major decisions, this model may alleviate potential tension against the Commissioner who is appointed Chair and as the ultimate decision-maker.

Considerations

Considerations will need to be made regarding which matters will go to the Board and which matters will be resolved by each Directorate.

The DPC will also need to consider and come to an agreement on how decisions will flow through this model and what can be delegated to Directorates.

Considerations for the Future

The following points have been identified and should be considered as the DPC progresses towards a future governance model:

Primary Considerations

- A change management and organisation design programme in order to support them through this time of transition and to ensure that their workforce is adapting as effectively as possible, so that they can optimize their talent and build on their success of achieving their business objectives.
- Consideration of re-grading employees per the 2022 Resource Allocation Audit conducted by KOSI and considering the workload and complexity of the work that is undertaken by the Commission.
- A formal communications plan outlining the Governance changes that are being made, including a formal schedule for Commissioner meetings and briefings from each head of department.

Secondary Considerations

- Documenting specific and measurable Key Performance Indicators (KPIs). Insights from the review of European Commissions, indicated that the definition of specific quantifiable KPIs promote good governance and improve transparency.
- Clearly defining Matters Reserved for all existing Committees. This could serve as part of the briefing for new Commissioners and should also be made accessible to the public to promote fair practices and transparency.
- Documenting the decision-making process at every level of the organisation, including the three Commissioners, for all existing Committees and each Head of Division. The DPC could employ the same decision-making process and model throughout the organisation to promote consistency.
- Consideration may be given as to whether the Chair rotates between Commissioners after a defined period of time e.g. 3 - 5 years.

Appendix A- Interviews

Data Protection Commission

1. Helen Dixon, Commissioner
2. Graham Doyle, Deputy Commissioner
3. Tony Delaney, Deputy Commissioner
4. MB Donnelly, Deputy Commissioner

Department of Justice

1. Doncha O'Sullivan and Eamonn Waters

Communication Regulation Authority (ComReg)

1. Senior Member

Appendix B- Documents Reviewed

- DPC Corporate Governance Framework (2022)
- Regulatory Strategy (2022-2027)
- Annual Report (2021)
- Annual Report (2022)
- Senior Management Committee Terms of Reference (2021)
- Senior Management Committee Terms of Reference (2023)
- DPC Inquiries Committee Terms of Reference and Related Operational Considerations (2022)
- DPC Budget Submission (2023)
- Data Protection Commission Senior Management Committee Effectiveness Review (2023)
- SMC Self Assessment Evaluation Summary 2022 Report (2022)
- Data Protection Commission Internal Audit Charter (2020)
- Data Protection Commission Audit and Risk Committee Charter/ Terms of Reference (2020)
- Statement on Internal Financial Control (2022)
- Procedure for Managing and Responding to Invitations (2022)
- DPC Induction (2021)
- DPC Senior Management Committee Induction Manual (2023)
- DPC Senior Management Committee Induction -Supplementary Material, Briefing (2022-2027)
- DPC Organisation Chart (2023)
- Data Protection Legislation
 - Data Protection Act (2018)
 - Data Protection Acts (1988 and 2003)
 - General Data Protection Regulation (GDPR)
 - 'ePrivacy Regulations' (2011)
- Governance and Accountability in the Regulation Process: Policy Proposals, Department of Public Enterprise (2000)
- Data Protection Commission Resource Allocation Audit, KOSI Corporation (2022)
- Memorandum of Understanding between The National Shared Services Office and the Data Protection Commission (2022)
- Employee Services Management Agreement between the National Shared Services Office and the Data Protection Commission (2022)
- Data Processing Agreement between the Data Protection Commission and the National Shared Services Office (2021)
- Service Level Agreement for the Provision of ICT Services to the Data Protection Commission (2022)
- Published Corporate Governance Standard for the Civil Service (2015)
- The Code of Practice for the Governance of State Bodies (2016)
- Appointment of additional Data Protection Commissioners in line with section 15 of the Data protection Act 2018- Summary briefing note on considerations arising to inform the review of governance, staffing and processes, Department of Justice (2023)
- Several publicly available documents on the Governance practices of other Data Protection Authorities, including annual reviews, published strategies and audits
- Several academic articles, case studies on good governance and on Governance frameworks

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