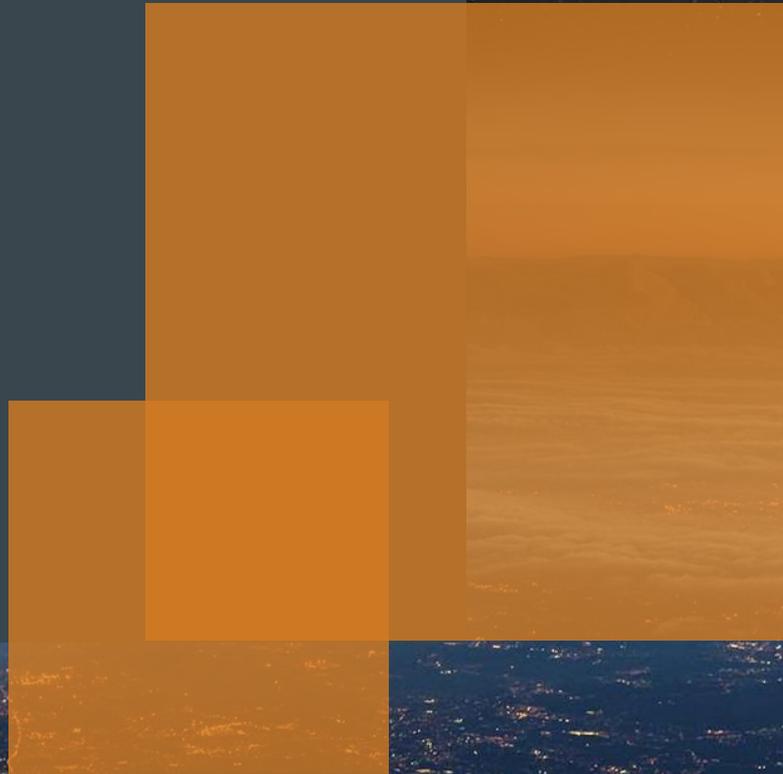


GDPR – where do the real risks lie?

Alex Brown

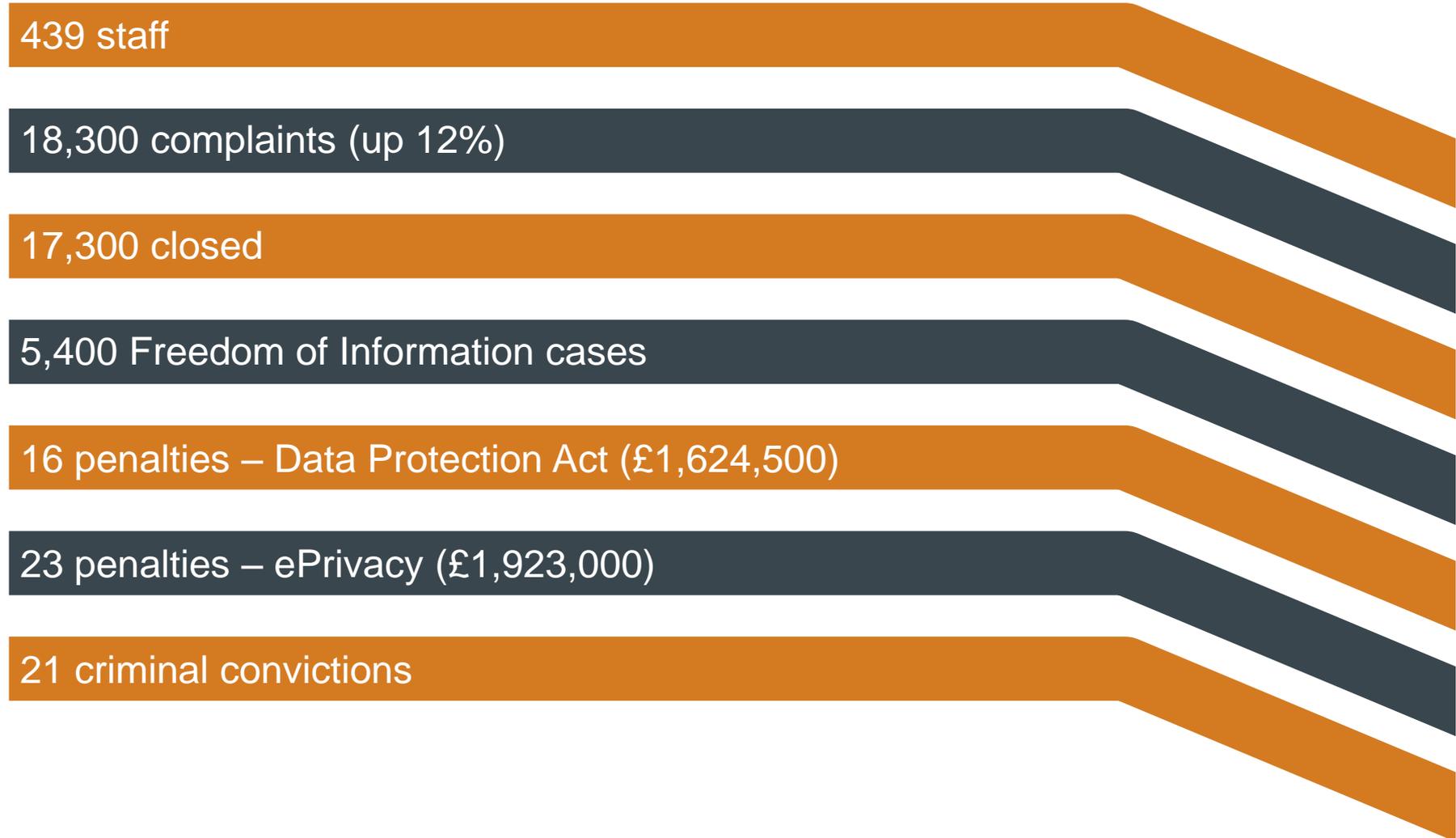


GDPR Risk - Theory

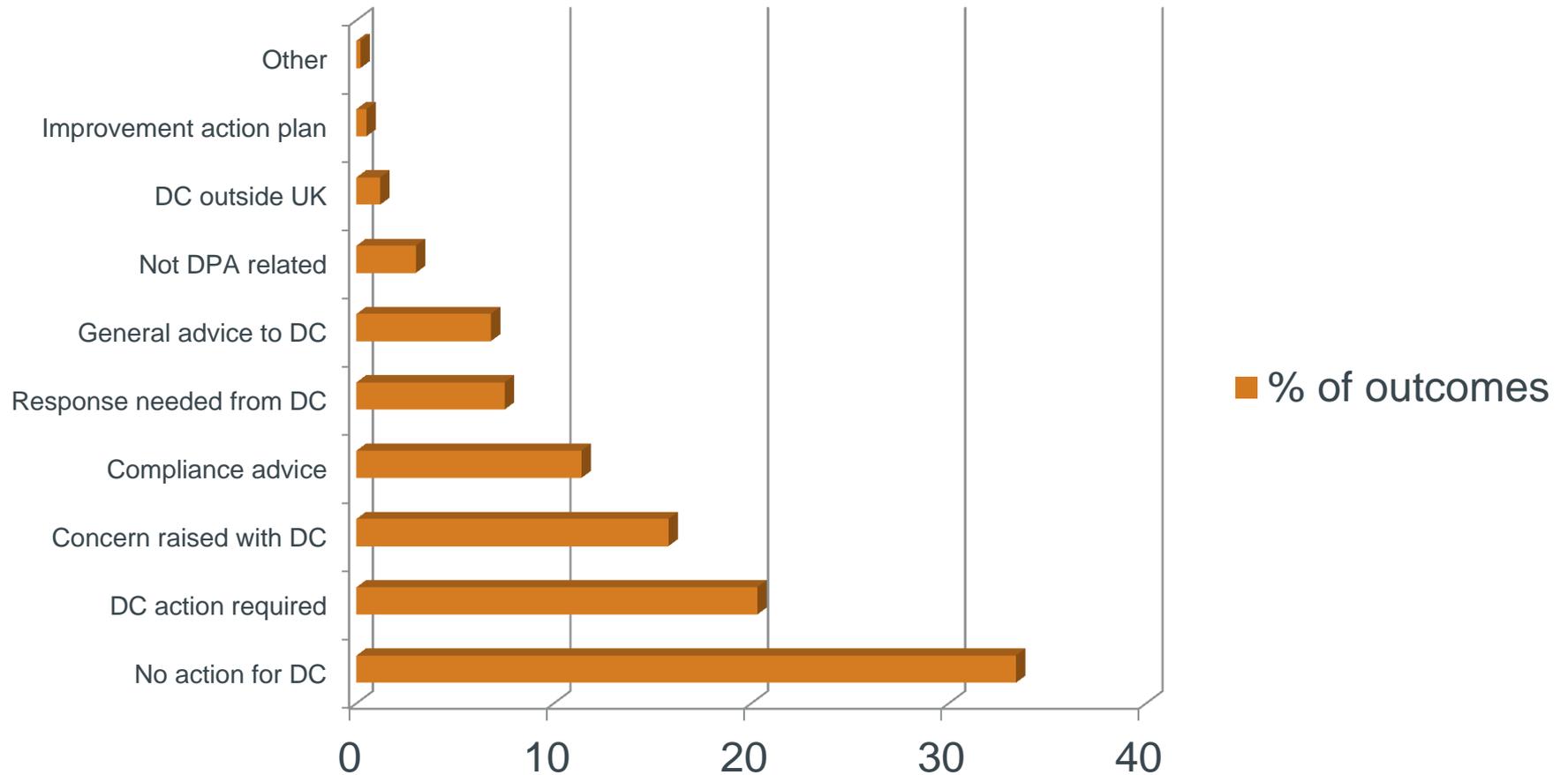
- Fines
 - Controllers: up to 4% turnover / €20m
 - Processors: up to 2% turnover / €10m
- Effective, proportionate and dissuasive enforcement
- Investigatory powers:
 - Delivery up of information
 - Audit
 - Access to premises
- Enforcement powers:
 - comply with individuals' rights
 - comply with the law
 - notify breach to individuals
 - limitation/ban on processing
 - rectification/erasure of data
 - suspension of international transfers



Reality of enforcement – the ICO in numbers (2016/2017)



ICO enforcement action – 2016/2017



Topic Area	% of complaints – 2016/2017
Subject access	42%
Disclosure of data	17%
Inaccurate data	11%
Security	7%
Right to prevent processing	7%
Use of data	5%
Fair processing	5%
Obtaining data	2%
Excessive / irrelevant data	2%
Retention of data	1%

GDPR Risk - Reality

- Under-resourced authorities
- High and growing level of complaints
- Authorities that are still catching up on interpretation of the GDPR
- International co-operation mechanism could create more problems than it solves
- Result: authorities will have to pick their battles carefully and focus on:
 - Easy wins
 - High impact enforcement to create the “ripple effect”
 - Data security / marketing / transparency

GDPR Risk - Compensation

- Compensation rights for individuals against data controllers and processors
- Joint and several liability of controllers and processors
 - Ability for controllers / processors to recover from each other
 - Impact on limitation of liability provisions?
- Potential for class actions?
 - Right for third party representation of data subjects
 - Opt-in or opt-out status on class actions / complaints
- Potentially and interesting area for claims management companies?

UK class action – Morrisons Case

■ Various Claimants -v- WM Morrisons Supermarket PLC [2017] EWHC 3113

- Personal data of nearly 100,000 employees compromised in early 2014. Claim brought by approx. 5,500 data subjects under the DPA and at common law (for breach of confidence, misuse of private information)
- Trial in October 2017 – Morrisons was found to be not directly liable but vicariously liable for data loss due to actions of malicious ex-employee
- Not directly liable:
“The short answer therefore to the claims that Morrisons are liable under the DPA for having broken the data protection principles is that they did not as data controller offend against those principles. The acts said to break those principles were those of a third party, and not their own”.
- But vicariously liable because actions taken by individual in course of employment

The cost of breach of trust?



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Or a minor bump in the road?



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