Upholding information rights

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ICO opening remarks - The Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament – Hearing on the Facebook/Cambridge Analytica case

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Thank you to the Chair and Members for inviting me to this session. I am the UK's Information Commissioner – in that role I am the supervisory authority for data protection law in the UK. My office which is known as the ICO, is, I believe, the largest data protection authority in the EU by staff numbers and funding. We are a proactive supervisory authority, with an educational and investigative role beyond adjudicating on data protection complaints. Specifically, in relation to the subject of this hearing, my office, is leading the investigation into the Facebook/Cambridge Analytica case, on behalf of our EU counterparts. Some other EU Data Protection Authorities have active investigations into a number of different concerns relating to Facebook.

I am joined today by my Deputy Commissioner James Dipple-Johnstone, who leads the operations side of my office and has taken a leading role in our investigation into the use of data analytics for political purposes.

We are appearing here today during an ongoing formal investigation. Therefore, there are limits to what we can say today. That may include responding to

comments made by the other panellists. I am happy to respond in more detail to the committee in writing when I am able to disclose further information.

But first, I want to assure you and the public who may be watching – I understand your unease about how online platforms, including Facebook, are using our personal data and who they may be sharing it with. More recently we have seen that the behavioural advertising ecosystem has been applied across to political campaigning to influence how we vote. I am deeply concerned that this has happened without due legal or ethical consideration of the impacts to our democratic system.

That's not to say that the online space is unregulated. Whenever online activities use personal data then data protection law applies and can provide effective protection for individuals. Data protection is a fundamental right in the EU Charter and CJEU case law, has made clear that online platforms are data controllers under data protection law. They can be held fully liable for their misuse of personal data.

These organisations have control over what happens with an individual's personal data and how it is used to filter content - they control what we see, the order in which we see it, and the algorithms that are used to determine this. Online platforms can no longer say that they are merely a platform for content; they

must take responsibility for the provenance of the information that is provided to users.

But I recognise that some aspects of our legal systems have failed to keep up with the unforeseen pace of the internet's development. In terms of data protection law, the GDPR is an important step forward for the law and data protection supervisory authorities to catch up. The GDPR is written flexibly to ensure that supervisory authorities like the ICO have the capacity to '*follow the data'* and establish who a data controller is, regardless of the medium in which personal data is processed.

Data protection law, and the reach of a data protection supervisory authority, extends well beyond brick and mortar office premises. Data crimes are real crimes. GDPR fully equips us to thoroughly investigate crimes that may have taken place entirely online.

As some of you may be aware, it was in May 2017 that I announced a formal investigation, explaining my concerns about invisible processing – the 'behind the scenes' algorithms, analysis, data matching and profiling involving personal data – that had taken place in political and referendum campaigning.

In February 2018, our focus on Facebook and Cambridge Analytica, one strand of the investigation, was heightened by evidence provided by Mr Wylie, who you will hear from shortly. It is against a backdrop of intense media and political interest

that the ICO has continued its investigation. I've also given evidence to the UK parliamentary committee investigating fake news, chaired by Damian Collins MP.

We currently have a twin track approach:

- to investigate specific allegations and conclude any enforcement actions.

- to produce a report about the wider implications of our investigation, including recommendations about gaps in regulation, both data protection and otherwise. We plan to publish this report before the end of this month.

Our investigation is significant and wide ranging - we have over 40 of our own investigators full time on the enquiry plus external legal and forensic IT recovery experts. This probably adds a further 20 or so staff. We are looking at over 30 separate organisations and the actions of around a dozen key individuals. We are investigating social media platforms, data brokers, analytics firms, political parties and campaign groups and academic institutions. We are looking at both regulatory and criminal breaches. We are working with other regulators, EU Data protection authorities and law enforcement in the UK and abroad.

Our work needs to meet the civil and criminal standards of evidence gathering and recovery if it is to be useful. We have recovered materials, including seizing dozens of servers containing, in total, hundreds of terabytes of data, from searches of several premises and dozens of interviews. We have used the full range of our powers, including formal notices to require information to be

provided, our powers of entry under warrant, as well as our audits and inspection powers.

We are looking at the complete range of sanctions at our disposal at this time including our new powers under the new UK Data Protection Act for no-notice inspections, quicker warrants, to compel delivery of evidence and to seal digital evidence where it cannot be immediately recovered.

The spotlight is well and truly on data protection and I recognise the important task the ICO has underway. This is a vital opportunity to assure citizens across the EU that where their personal data is misused there is an effective regulatory response to help protect them.

So, where do we go from here? The issues raised by the Facebook/Cambridge Analytica case go beyond the remit of the ICO as the data protection authority investigating the case. We will make recommendations in our upcoming report, the relevance of which will extend beyond the borders of the UK.

Beyond data protection, I expect my report will be relevant to other regulators overseeing electoral process and academic research. What is clear is that work will need to be done to strengthen information sharing and closer working across these areas.

But my main message for MEPs is to give the GDPR some time to operate. This investigation by the ICO is unprecedented in its scale – we believe it is the

largest investigation ever undertaken by a data protection authority. The investigation is providing an early opportunity to consider the GDPR against the pressures and demands of a real world contemporary case.

Our investigation and action in this case **will** change the behaviour and compliance of all of the actors in the political campaigning space. Journalists, whistle blowers, advocates and parliamentarians have played a key role in bringing these issues to public attention.

We now need sustained willingness by citizens to exercise their data protection rights. We need data protection authorities unafraid to use our new tools, sanctions and fining powers. And we need legislators supporting their data protection authorities to ensure they have the capacity and capability to deliver their important role.

I am happy to participate and answer questions; but I would ask the committee to consider that I am in the middle of a significant criminal investigation that goes wider than Cambridge Analytica and Facebook. This may constrain areas on which I am able to comment. We are happy to inform the committees of this house at later stages of any developments if that would be helpful.

Thank you.