



Information Commissioner's Office

The Information Commissioner's response to the Department for Digital, Culture, Media and Sport's consultation on the Centre for Data Ethics and Innovation

About the ICO

The Information Commissioner is pleased to respond to the Department for Digital, Culture, Media and Sport (DCMS)'s consultation on the Centre for Data Ethics and Innovation (the Centre). The Commissioner welcomes the fruitful collaboration which her office, as the regulator for data protection, has had with the DCMS over plans to set up the Centre and looks forward to working with the Centre in the future.

The Commissioner has responsibility for promoting and enforcing the EU General Data Protection Regulation (GDPR), the UK Data Protection Act 2018 (DPA) and the Privacy and Electronic Communications Regulations 2003, as well as the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

The Commissioner is independent of government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

The Commissioner's response to the questions asked in the consultation is as follows.

Section 2

Q1 Do you agree with the proposed role and objectives for the Centre?

We welcome the clear statement in para 1.9 that the Centre will not itself regulate the use of data and AI, and the recognition of the role of existing regulators, including the ICO.

The document refers at para 2.1 to the Centre's mandate to advise government on measures needed to ensure safe and ethical innovation in data and AI. The Centre's role as an advisory body to government will need to complement, and should be without prejudice to, our existing functions as set out in section 115 of the DPA. This gives us the specific duty to advise government on measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data, and the power to issue opinions to government on any issue related to the protection of personal data.

We support the proposed aim of building on and enhancing the existing institutional landscape through the activities set out in paragraph 2.2. Given the number of bodies that are now active in this field (and that are mentioned in this section), we believe that the Centre should avoid duplicating existing roles and seek to add genuine value by:

- addressing any gaps in the landscape, eg by providing long-term foresight and promoting ethical standards in the use of data; and
- promoting effective collaboration between the bodies involved.

Q2 How best can the Centre work with other institutions to ensure safe and ethical innovation in the use of data and AI? Which specific organisations or initiatives should it engage with?

We note that the document recognises our role as the UK regulator for data protection and we look forward to working closely with the Centre. We also welcome the confirmation at paragraph 1.9 that the Centre will not act as a regulator.

The document refers to situations "where the ethical and governance challenges posed by the use of data and AI go beyond current law and practice". The interface between ethics and data protection legislation is of particular interest to us. As data protection legislation is based on

fundamental rights of individuals, as well as the need to facilitate the use of personal data for economic and social progress, it is necessarily underpinned by ethical considerations. Concepts in data protection legislation such as fairness, transparency and accountability are inevitably informed by these ethical underpinnings.

On the other hand, there are situations where the innovative use of data may raise ethical issues but it does not strictly speaking engage data protection legislation, for example where data has been completely anonymised but its use has a significant effect on individuals.

The ubiquitous collection of data and the increasing use of AI to analyse it and make decisions poses new challenges, particularly in relation to fairness, transparency, reasonable expectations, profiling and automated decision-making. We therefore welcome the statement in paragraph 2.4 that “stronger ethical guidelines will promote trust in data and AI technologies, which in turn will help to drive the growth of responsible innovation”. This argument for ethical innovation is very much in line with our approach, as set out for example in our paper on [Big data, artificial intelligence, machine learning and data protection](#).

We therefore welcome engagement with the Centre, as an expert body in the sphere of ethics, in order to explore these issues further and promote innovation and the ethical use of AI.

We look forward to regular contact and meetings with the Centre, and to providing our input, based on our experience as regulator, to any proposals which the Centre will be formulating. There may well be a benefit to formally recognising this relationship in a memorandum of understanding, as suggested at paragraph 4.8 below. Having an established relationship should also ensure that any guidance that we are each developing will give consistent messages to businesses.

In terms of other organisations, contact with representative industry bodies is not specifically referred to here, although it is no doubt envisaged. For example, we suggest that techUK is a key organisation in this space, representing the UK hi-tech sector.

Section 3

Q3 What activities should the Centre undertake? Do you agree with the types of activities proposed?

We broadly agree with the proposed activities set out here.

As a general point, we think that the Centre, in carrying out the proposed activities, could usefully take account of work being done on data ethics and accountability in the EU and in other jurisdictions, in order to develop a world-leading approach to these issues.

We welcome the suggestion that the Centre should help to develop voluntary codes of conduct in relation to AI. There is specific provision for these in the GDPR, which gives us the duty not only to promote them, but also to formally approve them and accredit their monitoring bodies. The field of AI and innovative data use is one where codes of conduct could be particularly appropriate.

We have commented on the Centre's role in making recommendations to government under Questions 2 and 8, and we look forward to being consulted on how any recommendation function would work as part of our on-going relationship with the Centre.

We note that the proposed activities include providing expert advice and support to regulators on the implications of the use of data and AI, and we welcome this. We are significantly increasing our own resources in this area, but this will be enhanced by the expertise which the Centre can draw on.

We note that the Centre is committed to developing data sharing frameworks. We expect that these will be informed by the code of practice on data sharing which we are required to prepare under the DPA. We have already issued a call for views on updating our previous data sharing code, as the first stage of this work. We have also provided extensive input into the codes of practice developed under the Digital Economy Act 2017. The landscape for data sharing is already regarded as complex by some practitioners and any new frameworks will need to enhance and complement existing guidance.

Q4 Do you agree with the proposed areas and themes for the Centre to focus on? Within these or additional areas, where can the Centre add the most value?

The areas and themes identified in this section are critical ones in the ethical use of AI. We would also point out that, in particular, targeting of individuals, fairness, transparency and data access are also issues in terms of data protection legislation and very much part of our work as the regulator. We therefore look forward to the insights which the Centre will bring to these concepts. Dealing with the ethical issues involved is also likely to include a consideration of the safeguards that can be introduced by organisations to protect the rights of individuals.

Q5 What priority projects should the Centre aim to deliver in its first two years, according to the criteria set out above?

We suggest that the use of data analytics in political campaigning should be one area in which the Centre can collaborate with the ICO and other bodies. This is good example of an area where data protection and ethical considerations interact, and where the Centre can add value by acting as convenor of opinion and ideas. In her recent report, [Democracy disrupted?](#), the Commissioner called for an 'ethical pause' to allow policy makers, political parties, technology companies and regulators to consider the data protection and ethical implications of deploying data analytics. Specifically, the report recommended that the Centre should work with the ICO and the Advertising Standards Agency to conduct an ethical debate, in the form of a citizen's jury, to aid further understanding of the impact of data analytics in political campaigns. We are therefore pleased that the document proposes (at paragraph 4.10) that this is a tool which the Centre could deploy to gain understanding of the public's views.

We agree with the statement at paragraph 3.10 that the prioritisation of projects should be determined by value, rationale and urgency, particularly in view of the number of expert bodies in this space and the need for efficient use of resources. This is a realistic and proportionate approach.

Section 4

Q6 Do you agree the Centre should be placed on a statutory footing? What statutory powers does the Centre need?

We recognise that it may be necessary to place the Centre on a statutory footing to support its independent advisory status. However, we believe the best statutory form for the Centre could be determined by the initial experience of its operation. We think that any specific statutory powers should only be added on the basis of experience, and on assessment of how these would relate to existing powers of other regulators and on their likely impact. This would necessarily involve formal consultation with interested parties. For example, the ICO would be concerned about how any powers to request information conflicted with its own powers to request information and possible impact on investigations.

Q7 In what ways can the Centre most effectively engage stakeholders, experts and the public? What specific mechanisms and tools should it use to maximise the breadth of input it secures in formulating its actions and advice?

Taking account of the views of the public is essential and the document rightly recognises that this may not be a straightforward process. While traditional methods such as surveys and focus groups can contribute to this, we welcome the recognition of the role that innovative mechanisms such as citizen's juries can play. We as a regulator are increasingly interested in ways of engaging the public in complex data issues such as AI, and we are pleased that it is proposed at paragraph 4.10 that the Centre would also look to do this. There may be a benefit to having a citizen's jury to support the work of the Centre in general.

Q8 How should the Centre deliver its recommendations to government? Should the Centre make its activities and recommendations public?

Given the multiplicity of organisations that have an interest in the ethical and innovative use of data, including regulators, research bodies, think tanks, industry bodies and civil society organisations, the Centre should be well placed to take account of the range of the views from these bodies and reflect these in its recommendations to government. We would

welcome the opportunity to be consulted on recommendations as they are being drafted, particularly in view of our statutory powers under the DPA to advise and issue advice and opinions to Parliament and government. This would of course be without prejudice to the Centre's own expertise and independence in formulating its recommendations. It will also be important to clarify the status of any recommendations should the Centre be placed on statutory footing and how these recommendations would need to recognise actions that other regulators, including the ICO, might make, as part of the discharge of their statutory functions.

Given our role in promoting the transparency of public bodies, we support the proposal that the Centre's reports and recommendations should be made public when they are delivered.

Elizabeth Denham
Information Commissioner
30 August 2018