

## **The Information Commissioner's response to the Financial Conduct Authority's call for input on the concept of a cross-sector sandbox**

The Information Commissioner's Office (ICO) has responsibility for promoting and enforcing the General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA18), the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Privacy and Electronic Communications Regulations 2003 (PECR), amongst others. We are independent from government and uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. We do this by providing guidance to individuals and organisations, and taking appropriate action where the law is broken.

The ICO welcomes the opportunity to respond to this call for input. While the Information Commissioner recognises the value of innovation and the benefits it can bring to the UK economy, technology is becoming increasingly complex. The application of new products and concepts is leading to scenarios in which a cross-regulatory approach may be necessary to ensure that the impact of technology on individuals' rights is properly understood and overseen.

The ICO has recently launched its own regulatory sandbox, helping companies and public bodies deliver new products and services of real benefit to the public with assurance that they have tackled built-in data protection at the outset. It is in its beta phase, with a first cohort of 10 projects being selected to participate from across a broad range of sectors. The products and services involved met the selection criteria of being genuinely innovative and viable and with the potential for delivering real benefit to the UK public.

Within the last 12 months the ICO has also formed a discrete Innovation department, focusing on novel developments in the use of personal data. Areas of focus include data processing requiring data privacy impact assessments (DPIAs), research into Artificial Intelligence (AI), and privacy within social media and other digital products.

The ICO has also received an award from the BEIS Regulators' Pioneer Fund (RPF) to establish the Regulators' Business Innovation and Privacy Hub ('the Hub'), which works in partnership with other regulators to provide businesses with expert support in information privacy and data protection. Sitting within the ICO's Innovation department, a key element of the Hub's work is to promote the benefits of taking a 'data protection by design' approach. The original scope of working with other regulators in receipt of an RPF grant has since broadened to

include any regulator or similar organisation which offers innovation services or a sandbox function.

The Hub is about to begin work with the FCA's sandbox and Direct Support functions, and supported the FCA TechSprint on data sharing and financial crime which took place in July 2019.

In December 2018 the Hub responded to questions from the FCA similar to those posed by this call for input. At that time the team was in its infancy and, as with the ICO's sandbox, was not yet working with innovators. The following response includes some of the answers given in 2018.

We believe that sandboxes are powerful branding tools for regulators, and can act as a 'shopfront' for an innovation agenda. There is value in having a service which focuses joint attention on regulation and innovation and encourages detailed working between regulators and businesses. Having a 'no wrong front door' policy, in which a business can approach any regulator and be directed to the correct place, would mean that businesses could receive information and direction more efficiently.

A cross-sector sandbox could also prevent regulatory 'silos', through a system where approaching one regulator raises awareness of needs with another. This could lead to regulators having consistent understanding of emerging and cross-market trends, and uncovering hidden assumptions about each other's work.

The Hub is already working with the FCA on a practical basis to ensure that data protection considerations are embedded at an early stage of customer experience and interface development, providing input at the recent FCA Techsprint event. We believe that cross-regulatory oversight at an earlier stage in the roll-out of the [Google DeepMind Streams app by the Royal Free NHS Foundation Trust](#) may have resulted in further clarity on the interplay between the duty of confidence and the data protection framework in this case.

We recently attended the FCA's roundtable event on the feasibility of a cross-sector sandbox and found it very valuable to engage with other interested parties. We note the comments at that event that the ICO is a 'true cross-sector regulator' because of its regulatory function of overseeing legislation which cuts across sector boundaries. There is significant value in the ICO being involved in any cross-sectoral work which involves the processing of personal data, and a strong argument that data protection considerations must be highlighted to businesses and individuals seeking to innovate.

The GDPR already requires that an organisation consults the ICO where a data protection impact assessment indicates that processing data, *'would result in a high risk in the absence of measures taken by the controller to mitigate the risk'*. Promotion of this process at an early stage by multiple regulators would assist us in ensuring that data protection requirements will be taken into account by the businesses involved, and that other regulators are aware of those requirements where personal data is a major factor in an innovative product or service.

On the basis of the reasons outlined above, we feel that there is true value in formalised cross-regulatory working. The Hub in particular is seeking to further this through its current work with the FCA and other regulators.

We believe that significant consideration needs to be given to the best way to deliver a such a service. In order to determine whether a sandbox is the best mechanism to achieve that cooperation, we suggest that the following questions be addressed:

- What role would individual regulators play in a cross-sector sandbox? Would a lead regulator be identified? Will the definition of 'regulator' include organisations with similar roles, such as Ombudsmen? How will regulators' independence be maintained in such a scenario?
- What does the FCA see as being the primary purpose of such a sandbox? The primary function of the ICO's sandbox is to assist our regulatory function and facilitate compliance with the legislation we oversee, rather than assisting products to market. Whilst we recognise that there may ultimately be business benefits to participants, we are clear that our primary purpose is to help achieve compliance of innovative uses of personal data in the public interest – how will the balance of these purposes, and the different kinds of purposes that other regulators may have, be addressed in a single sandbox?
- How will eligibility for applications will be established between regulators? Who will oversee the applications process?
- How will what is 'innovative enough' be determined across regulators?
- How will regulatory priorities and risk appetites be determined and aligned?

- How will a sandbox be staffed in the face of competing priorities and the level of complexity and time involved in establishing legal mechanisms and implementing appropriate paperwork, legal documentation and terms and conditions?
- How will the order in which advice should be given by different regulators be determined?
- How will the completion of any pre-requirements (such as DPIAs) will be ensured, to avoid the ICO needing to provide basic advice?
- How will individuals' rights will be protected across the interaction of multiple pieces of legislation?
- How will regulators' own interests be preserved? For example, in those cases where one regulator may choose not to support a firm with a poor compliance history or where there is a clear conflict of interests?

We would also like to draw attention to the other options that could be pursued, either as an alternative or additional component of the proposed cross-sector sandbox model. For example, the Hub is currently considering the benefits of a number of cross-regulatory methods to provide advice and support. These include the development of linked website areas for innovators (ie with signposting to other relevant regulators' guidance), publication of joint communications, and continued provision of support to events such as the FCA TechSprint.

This 'Hub model' of creating a gateway between regulatory sandboxes and the ICO is proving effective and practical, particularly in relation to cross-regulatory collaboration and for businesses where a sandbox is not available in their sector or the business does not meet eligibility criteria.

We have also considered the possibility of developing a gateway or triage system, where a business would be able to approach a virtual team which would decide which regulators would be able to give advice, or suggest applications to a specific sandbox. A model such as this could bring the benefits of cross-regulatory awareness and signposting without any of the complexities we have outlined above.

## **Proposed next steps**

Sharing good practice and lessons learned is the cornerstone of our innovation work and we believe that forming cross-regulatory cooperation networks should be prioritised before any potentially complex mechanisms are put in place. Both creating and joining such networks is one of our own regulatory priorities, resulting in the ICO's membership of the UK Regulators' Network (UKRN), the BEIS Regulators' Forum, and the creation of the Hub.

The ICO is committed to supporting innovation through the provision of relevant advice and the use of cross-regulatory collaboration, and would welcome further discussion on any of the points raised within this response.