

Responding to the consultation

Your details

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity.

We will publish our evaluation of responses. Please note that we may publish all or part of your response unless you tell us (in your answer to the confidentiality question) that you want us to treat your response as confidential. If you tell us you wish your response to be treated as confidential, we will not include your details in any published list of respondents, although we may quote from your response anonymously.

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Would you like us to treat your response as confidential?*

If you answer yes, we will not include your details in any list of people or organisations that responded to the consultation.

Yes No

Is this a personal response or an official response on behalf of your organisation?

Personal response

Official response

If you ticked "Official response", please respond accordingly:

Type of responding organisation*

Business

Charity

Local authority

Central government

Wider public sector (e.g. health bodies, schools and emergency services)

University or other higher education institution

Other representative or interest group (please answer the question below)

Type of representative group or interest group

Union

Employer or business representative group

Subject association or learned society

Equality organisation or group

School, college or teacher representative group

Other (please state below)

Nation*

England

Wales

Northern Ireland

Scotland

Other EU country: _____

Non-EU country: _____

How did you find out about this consultation?

Gov.uk website

Internet search

Other

May we contact you for further information?

Yes No

Questions

Improving public service delivery

Question one: Are there any objectives that you believe should be included in this power that would not meet these criteria?

No

Yes

If yes, please explain your reasons.

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Question two: Are there any public authorities that you consider would not fit under this definition?

No

Yes

If yes, please explain your reasons:

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Question three: Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your reasons:

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Question four: Are these the correct principles that should be set out in the Code of Practice for this power?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

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Providing assistance to citizens living in fuel poverty

Question five: Should the government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

Fuel poverty can have profound impact on households impacted by it, and any mechanism that can better target assistance at those in need should be encouraged.

Question six: Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

Energy bill rebates however are not a solution; they just slightly lessen the impact. Energy efficiency support is far more beneficial as it delivers enduring energy savings, so this should definitely be included.

Question seven: Are there other forms of fuel poverty assistance that should be considered for inclusion in the proposed power?

- Yes
- No

If yes, please explain your reasons:

Fuel poverty assistance needs to be considered in the wider context of the future Energy Company Obligation from April 2017. This is proposed to be more focused on fuel poverty, but the definition of fuel poverty, and hence the eligibility criteria under that Scheme, may not match the current eligibility criteria for the Home Heating Cost Reduction Obligation under the current ECO scheme, which is purely benefit receipt driven, and limited to those living in privately owned property.

Consideration should also be given to data matching with the Energy Performance Certificate (EPC) Registers, which are operated on behalf of DCLG. It's not clear in this consultation what data DECC and the VOA hold that would be used, but the EPC rating of a property is a key element of Government fuel poverty strategy - for as many fuel poor homes as "reasonably practicable" to be raised to a Band C energy efficiency rating by 2030, with interim targets for improving as many fuel poor homes (as reasonably practicable) to Band E by 2020 and Band D by 2025, so this would seem an appropriate data set to use. The data DECC have may be around energy consumption, but many people in fuel poverty are under heating their homes,

so energy consumption is not an accurate indicator of the energy efficiency of a dwelling.

Access to civil registration information to improve public service delivery

Question eight: Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

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Question nine: Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to a deceased person)?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

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Combating fraud against the public sector through faster and simpler access to data

Question ten: Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

Yes

No

Please explain your reasons:

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Question eleven: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed?

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Improving access to data to enable better management of debt owed to the public sector

Question twelve: Which organisations should government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtor who owe multiple debts?

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Question thirteen: How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

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Question fourteen: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed??

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Access to data which must be linked and de-identified using defined processes for research purposes

Question fifteen: Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

Yes

No

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Question sixteen: To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Yes No

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Question seventeen: What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

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Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

Question eighteen: Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

Yes

No

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Question nineteen: If your business has provided a survey return to the ONS in the past we would welcome your views on:

a) the administration burden experienced and the costs incurred in completing the survey

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b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics

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Question twenty: What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to the processes that collect, store, organise or retrieve data?

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Better use of data in government consultation – response to questions

I have provided comments which draw on my particular experience, and which I think address the questions included in the paper. Nonetheless, I have numerous other questions and comments which do not directly address a question posed; I have kept these to myself.

Question three: Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

It seems necessary that any private body which is granted special legal powers to share information would also become (if they were not previously) a 'public authority' for the purposes of the Environmental Information Regulations, by virtue of Regulation 2(2)(c), following the criteria established in the Upper Tribunal ruling in *Fish Legal vs ICO* and others.

It also seems likely that a body granted such powers would become (if they were not previously) a 'public authority' for the purposes of the Human Rights Act 1998, by virtue of Section 6, paragraph (3)(b) of that act.

That being said, I am not opposed in principle to the granting of new powers to such bodies, but care must be taken in defining 'public service functions', and the legislators must point the relevant ministers, the ICO and the Houses of Parliament in the direction of the area of common law (i.e. judicial review or the Human Rights Act) in which they ought to be anchoring their judgements when considering additions to the schedule.

Question four: Are these the correct principles that should be set out in the Code of Practice for this power?

Non-public sector bodies to which the FOIA does not apply, but which are granted this power ought to be required under the Code of Practice to regularly publish anonymised statistical information about their use of the power. This will help to ensure that "citizens gain greater visibility about what data is held on them and how it is used", as suggested in paragraph 6.

Question eight: Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

Where data is shared as required on a case-by-case basis, allowing the individual to choose whether to supply their own hard copy of a document or allow (upon payment) a soft copy to be shared by another department (I am in favour of such a discretionary arrangement), any argument that this arrangement would "reduce the risk of fraud" (paragraph 60.e.) is greatly undermined.

Additionally, while paragraph 65. provides that a memorandum of understanding will established retention guidelines for *bulk data*, I presume that the retention of data acquired on a case-by-case basis will be at the discretion of the receiving department, based on the application of the fifth data protection principle of the Data Protection Act.

I agree that it is appropriate that payment be made for data transfers on a cost-recovery basis, and that public authorities which require data on a case-by-case basis may use their discretion to accept that data from the individual to whom it relates (rather than requesting it be transferred from another authority). However, if the public authority in need of data would be required to choose between footing the bill for the transfer of the data, and requiring that the individual provide it themselves (at no cost to the authority), I have no doubt which alternative the authority will elect. This being said, authorities would be more inclined to exercise the proposed powers if they were permitted to transfer the applicable cost-recover charge to the individual; but it is unclear whether this is an option that the consultants have considered.

Question ten: Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

I feel some clarity is required as to the extent of data sharing between authorities once it has been established that data has not been validated (under Stage 1 'Validation'); it is made clear that one authority will be responsible for undertaking the steps in Stages 2 and 3, but it is not clear which authority this will be, since any data inconsistencies will be mutual between authorities. I presume that the authority which gathered the

information which initiated the validation procedure under Stage 1, will be the authority tasked with undertaking Stage(s) 2 (and if necessary 3). However, it remains unclear—

- how an authority might know that another authority might already be undertaking Stage 2 or 3, and that their efforts would likely be in vain; and
- what powers this authority will have to recommend changes to the data held by other authorities if it is found to be inaccurate.

Also, I am concerned that the consultants do not have an accurate idea of —

- the extent to which information will be inconsistent between authorities subscribing to the sharing powers,
- the extent to which these inconsistencies will be for innocuous reasons, and
- how innocuous examples can be distinguished from fraudulent examples.

It is clear that the utility of this sharing power will be reduced with a higher proportion of inconsistencies, a higher proportion of innocuous reasons, and less ability to distinguish. Utility below a certain point will lead to disinterest in using the power, and this will further diminish its utility.

Question twelve: Which organisations should government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?

The 'illustrative clauses: debt' document provides an unusually narrow definition of debt, which more closely resembles a definition of overdue debt; "all or part of that sum remains unpaid after the date on which, or after the end of the period within which, it is required to be paid". The paper provides the case study of the Student Loans Company (SLC), but it seems that the typical debts owed by debtors to the SLC do not fall within the proposed definition of a debt.

Question thirteen: How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

The government must agree a schedule of priorities which set out the order and proportions in which multiple debts must be repaid to the relevant authorities. They must also establish who will be responsible for collecting debts which are owed to multiple authorities, if the "single debtor view" is accepted.

Question sixteen: To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

On principle, I am in favour of the proactive publication of all details which would be potentially disclosable under the FOIA or EIR; I also think that potential disclosure would reduce the frequency of spurious applications. Also, Paragraph 105. provides a list of things which must be included in the register published by the Accreditation Authority; this list does not contain the research itself; I wonder whether this is an oversight.

Better Use of Data – Consultation Paper

Comment

The principle of sharing data between public authorities is a good one, with many citizens having an expectation of this already. It would assist in targeting public money to those most in need e.g. through the delivering of the Troubled Families Programme, providing direct discounts through the Warm Home Discount to those in poverty and providing help with those with multiple debts across multiple public agencies. It would also help a targeted approach to identifying those who are suspected of committing fraud, which some agencies find hard to do as they don't always have the resources to do this. Finally, it would help stop the duplication of information being collected e.g. for statistical purposes and getting citizens to provide birth, death etc. etc. certificates to public authorities when the information is already held by the General Register Office.

In some cases data is already being shared between many public authorities but sometimes the agreements for this data sharing are limited and not always sound. These proposals would create a legal gateway to share personal information and provide safeguards to ensure the data sharing is done securely and in accordance with the legislation. It seems almost essential to make the unlawful sharing of data a criminal offence in these circumstances as potentially a huge amount of personal data is going to be shared and any unlawful disclosure would be a major breach of the Data Protection Act.

The only concern regarding these proposals is when data is being shared to a third party which is not deemed a public authority, most importantly when data is being shared for research purposes. It could be perceived that data about citizens is being shared with 'trusted third parties' so that they can make a financial gain from it. Some would argue that this is wrong on the grounds of morality as it could lead the door open to exploitation of this information by these third parties. There must be an assurance that the stricter safeguards set out in the consultation are strictly adhered to and that the accreditation body (or an equivalent) will have the necessary powers to investigate and deal with any third parties which breach the safeguards.

In relation to sharing data for the purpose of research, the consultation asks '*Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?*' It would seem that the processing of a request for information like this is comparable to processing a FOI request. However, unlike a FOI request, it would seem necessary that public authorities should be able to charge fees for providing data for research purposes, especially where there is a real possibility that a significant financial gain is to be had from the research. It would seem appropriate for full cost recovery to be sought including the cost of officer time to respond to the request and the cost of other resources such as printing and posting costs where appropriate – this of course could be waived or partially waived by a public authority at their discretion, for example where research is being undertaken for charitable purposes.

A further question posed by the consultation is '*What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?*' It seems that there is a potential that most research projects

could benefit the public, albeit a very limited benefit. Therefore, a criterion should be set to benchmark the level of public interest before information could be shared for the purpose of research. Some questions that could be asked to identify whether a research project has the potential for public benefit include:

- What is the public benefit to be gained from the research?
- What section of society will benefit from the research?
- What is the approximate number of people (if known) who will benefit?
- Is there a real possibility of a financial gain to be had from the research? If so to what extent and to whom?
- How is the research envisaged to be used once completed?

The answers to these questions could provide insight into the research so that an evaluation could be made as to whether, and to what extent, the public could benefit from the research and whether the benchmark has been met.

The consultation recognises that significant parts of public services are delivered by non-public sector bodies and to restrict the data sharing to not include these bodies could limit *'the effectiveness of the power to help improve the lives of citizens'*. The report further argues that *'increasing the scope of the power to cover non-public sector bodies will ensure the application of consistent conditions and safeguards for accessing information and align the public service delivery proposals to those proposed to tackle fraud and debt'*. In regards to this, the consultation poses a question of *'Should non-public sector bodies (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the public service delivery power?'* In response to this it seems that these non-public sector bodies should be included in the scope of the public service delivery power. The current trend within both government and local authority is to 'contract-out' certain services as a cost saving exercise; if these bodies were excluded then arguably the objectives of these proposals could not be fully met.

However, in relation to the point above, an issue arises in defining which non-public sector bodies would fall into the scope of the provisions. To achieve this legislation, the consultation defines a public authority as *'a person who exercises functions of a public nature.'* Arguably, this definition is too wide and clarification would need to be provided as to what is meant by *'functions of a public nature.'* For example, if the definition were to come in line with FOI provisions then the private sector companies including hybrid bodies – where only some of the functions they undertake may be public - where they have entered into contracts to perform these public functions would be excluded from the definition and therefore fall out of the scope of the proposed legislation. This could be resolved by a Schedule to the Act which sets out a list of non-public bodies which fall under the scope of the legislation which could be amended as necessary and in addition set criteria to be met to fulfil the definition of *'functions of a public nature.'*

Where non-public bodies are identified as exercising functions of a public nature, then it is arguable that stricter safeguards need to be put in place to ensure that information is re-used by these bodies to aid the provision of other services they offer which fall out of the scope of the legislation for example, for marketing purposes. The consultation has proposed such safeguards by applying legal and confidentiality restrictions on how recipients are permitted to use information and by putting in place criminal sanctions if these restrictions are

breached. The consultation does not address how these safeguards will be imposed or by whom – it does mention that enforcement action could be taken under the Data Protection Act if the information is misused and in cases where information is shared with energy suppliers for the purpose of applying direct discounts via the Warm Home Scheme, these companies are regulated by Ofgem, which has a wide range of enforcement powers. It is suggested that if these safeguards are going to work effectively then it needs to be determined as to the body responsible for enforcement. This could perhaps sit with the Information Commissioner or would a new body need to be set up?

Conclusion

As a proposal the idea of data sharing between public authorities seems a forward thinking initiative with many benefits for both public authorities and citizens alike. The issue arises where non-public third parties are added to the equation and questions arise as to whether the access to large datasets of personal information would lead to some to misuse it for gain? Although the consultation proposes safeguards, which go some way to addressing these worries, further clarification of how and by whom these safeguards will be enforced needs to be provided. Furthermore, the sharing of information must be done transparently and any scheme under these provisions would need to be scrutinised regularly to ensure that the powers of the Data Protection Act 1998 and the corresponding eight Data Protection Principles are not compromised.

The Scale-Up Institute
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22nd April 2016

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Dear Sirs,

Better Use of Data - Consultation

The Scale-Up Institute is delighted to contribute to the Government's consultation on Better Use of Data which is such an important subject to scaling businesses in the UK and the analysis of economic trends.

In recent times the Government has done much to support the development of data provision, and open up data sources and statistical information that has benefitted the UK in its analysis of economic drivers and business support needs, thereby making interventions within the private and public sector more efficient and targeted. It is encouraging that the Government is determined to continue this drive and take forward further work in using data in even more effective ways.

The Scale-Up Institute, borne out of the Government commissioned Scale-Up Report, is a private sector led organisation, whose focus is on supporting the needs of the UK's established high growth firms, across sectors and geographies, that are growing on average at 20% per annum, in employees or revenue, over a 3 year period. Scale-up businesses represent the engines to economic growth, productivity and jobs as highlighted in the Octopus 'High Growth Small Business Report 2015'. This report found that in the UK, high growth businesses created the equivalent of approx. 4,500 new jobs every week, 3 times as many new jobs as the FTSE 100.

The Better Use of Data review has the opportunity to broaden access to the statistical evidence base between HMRC and ONS to enable even further and quicker analysis of business and economic trends, thereby allowing both the public and private sectors to better understand and detect high growth patterns and areas of need. At the same time, making more effective the data sharing between Government departments, and streamlining interaction with businesses, by not duplicating information requests, is helpful and beneficial.

The current Government is undertaking leading work to enhance the usability and openness of all its data sources. The Better Use of Data review represents a further excellent opportunity to leverage the developments in technology and API usage as well, as support the Government's digital agenda.

In our response to the Government's recent Digital Strategy review, the Scale-Up Institute highlighted that releasing data that identifies growth companies would be particularly beneficial to improving the speed and efficiency of the supporting, targeting and monitoring of fast growing businesses by the Growth Hubs, UKTI, cities and Catapult Centres as well as the private sector. We know from research conducted by YouGov, that the overwhelming majority (97%) of high-growth businesses support better data sharing internally within Government, including key HMRC data which allows their 'scale-up status' to be identified and decreases the time-lag for targeted engagement with such businesses across the public and private sector on finance, exports, skills, apprenticeships and procurement by circa 12-18 months.

The Scale-Up Institute therefore supports the Government's intent to extend new powers and support a 'legal gateway' for (HMRC held) corporation tax and income tax information to be shared directly with ONS, with relevant safeguards. This will allow significant improvements to the quality and timeliness of economic statistical outputs so vital in targeting effective public and private sector activities.

We also support the intent to replace information sharing orders with a power for public authorities to provide identified information to the Statistics Authority thereby facilitating ONS's access to data. The reuse of data held has significant potential to reduce annual costs to businesses and reduce a regulatory burden to businesses of being required to complete surveys to provide information which is already held elsewhere by Government. This can only also help facilitate faster policy, funding and economic decisions and the speed of actions taken to support our high growth firms.

We further endorse the Government's overarching principle that the work on Better Use of Data encompass the devolved administrations and that any extension of powers allows UK-wide coverage. It will be beneficial to allow non-public sector bodies (such as private companies and charities) that fulfil a public service function to a public authority to be included in the scope of the public service delivery powers subject to a Code of Practice with principles as outlined.

As regards allowing the use of data for research, we support allowing the use of de-identified data to support accredited researchers to access and link data in secure

research for public benefit and thereby further help UK citizens and UK businesses. Whilst some form of fee would seem appropriate, this should be proportionate and we agree that there should be some form of maximum fee permitted which is monitored by the UK Statistics Authority.

In conclusion, the Scale Up Institute supports the Government in taking the important steps identified in the Better Use of Data consult specifically as regards widening the access of HMRC data for research and official statistic purposes. It is through the ability to access such data that we can all better undertake and target support to economic growth areas and scaling businesses, ensuring resources are appropriately aligned. We know that Scaling businesses support a wider sharing of information across Government departments, and a reduction in regulatory burden, which this should bring. We welcome the opportunity to provide input through this submission and are happy to assist in next steps. Should you require any further immediate information or discussion then please do not hesitate to contact the undersigned.

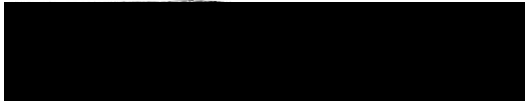
Yours faithfully,

Irene Graham

Irene Graham

CEO

The Scale Up Institute



The Information Commissioner's response to the Cabinet Office's consultation on better use of data

1. The Information Commissioner has responsibility in the UK for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and the Privacy and Electronic Communications Regulations 2003, as amended (PECR). He also deals with complaints under the Re-use of Public Sector Information Regulations 2015 (RPSI) and the INSPIRE Regulations 2009.
2. The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold 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 he can, and taking appropriate action where the law is broken.

Introduction

3. The Information Commissioner welcomes the opportunity to respond to this consultation and was pleased to be involved in the open policy making process provided by the Cabinet Office and facilitated by Involve. Our response provides general comments on the overarching themes of the consultation, followed by more detailed comments on each of the specific proposals. The Commissioner's response to specific questions is restricted to those that fall within his remit.
4. The Commissioner recognises the potential benefits of justified, sensible data sharing and how it can help improve the delivery of public services and improve policy decision making. We have always made it clear that data protection should not be a barrier to necessary and appropriate data sharing, and this is emphasised in our statutory Data Sharing Code of Practice¹. Large scale sharing of personal data across government and beyond inevitably engages privacy concerns and must be shown to be justified and proportionate. This is particularly the case for proposals involving bulk data sharing and the use of big data analytics. As more data is shared ever more widely and big data analytics are used in complex and unexpected ways, it

¹ https://ico.org.uk/media/for-organisations/documents/1068/data_sharing_code_of_practice.pdf

will be particularly important to consider from the outset the privacy risk, the possible impact on individuals, and how to promote transparency so that people understand how their data is going to be used.

5. There is a clear need for extensive data sharing to be accompanied by robust safeguards and the focus of our response is on whether the proposed safeguards in the consultation paper are sufficient and align with data protection obligations. The consultation paper explains that the package of legislative proposals has been designed to sit alongside rather than override existing powers or legislation which enable public authorities to access or disclose information. The new EU General Data Protection Regulation (GDPR) and Directive have both now been adopted and will come into force in 2018 following a two year transition period. The forthcoming GDPR includes stronger provisions on processing only the minimum data needed, requirements on clear privacy notices, explicit requirements for data protection by design and default, and for carrying out Data Protection Impact Assessments (DPIAs). There will have to be a thorough consideration of the impact of the new EU legal framework on any proposed data sharing legislation, including any government decisions on implementing the legislation.

General comments

6. It is important that any provisions that may increase data sharing inspire confidence in those who will be affected. Our research shows that the public are concerned about who their data is shared with and reflect concerns that they have lost control over how their information is used. Even apparently well-meaning sharing of data such as GP patient records for research purposes can arouse strong opinions.
7. We welcome the emphasis in the paper on a permissive approach to providing legal gateways to enable data sharing rather than on mandatory powers obliging public authorities to share. This positive, enabling approach to legislating for data sharing has advantages over automatic or mandatory obligations to share government data and will enable organisations to make balanced decisions in line with the DPA on whether the proposed data sharing is justified and proportionate.
8. We also support efforts to constrain the powers in the Bill by enabling specific data sharing rather than a wide, generic power to share all government data. Parliament made it clear during the passage of the Coroners and Justice Act 2009 that it did not support a very broad generic power for public authorities to share data, but we recognise that improvements can be made to legislation to enable more flexible and faster decisions enabling data sharing within government. It is

clear from our experience of working with public authorities that some practitioners continue to be confused on whether they can share data. Although the current system of establishing legal gateways for particular data sharing activity can be confusing for practitioners, we acknowledge that combining a number of legal gateways for sharing government data in one piece of legislation could help improve understanding of what the law allows.

9. The law must continue to protect individuals from excessive, unnecessary or disproportionately intrusive data sharing. We welcome, therefore, the key guiding principle behind the proposals that the powers of the DPA should not be weakened and that the proposals should be aligned with the DPA data protection principles. There is also a welcome emphasis on proportionality, and on the need for data minimisation and security. The consultation emphasises the benefits to the citizen of improved online services. A key principle of the DPA concerns individuals' rights and we would wish to see this emphasised in any subsequent codes of practice.
10. We support the proposal to have a review of the powers in relation to the use of pilots for the fraud and debt proposals and welcome the proposal that this will be carried out in consultation with the ICO. It may be helpful to consider whether there should be wider provisions for post-legislative scrutiny in the primary legislation, especially for the more privacy intrusive proposals where civil society organisations continue to have concerns. A sunset clause or some form of periodic review of how the data sharing has worked in practice, whether it has been proportionate and whether the safeguards are working effectively could help build confidence and trust in government data sharing.
11. The illustrative clauses contain provisions for Ministers to specify in the statutory instruments the names of the public authorities to be involved in the sharing but there is not a requirement to specify the nature of the data to be shared or the purpose for doing so. This detail should be subject to effective Parliamentary scrutiny. We understand that this will provide more flexibility, but we would wish to see a requirement in the codes of practice that this information should be clearly set out in the Privacy Impact Assessments (PIAs). There is a reliance on codes of practice to provide additional details and safeguards. It is important that the likely content of these codes is available for scrutiny during the passage of any eventual data sharing legislation, so that the whole regulatory framework including any limitations is clear.

Definitions of personal data and other terminology

12. The proposed legislative proposals include a number of definitions of types of data and the organisations that will share it, which differ from the terminology used in data protection legislation. The ICO does not seek to have a monopoly on the approach taken to defining the various types of data that will be used in the data sharing process but the decision on what is and what is not personal data is a basic one and widely understood. We think there are advantages in aligning the terminology, as far as possible, with that used in the DPA and in future the GDPR; otherwise there is a risk that practitioners will be confused about whether 'identified data' or 'personal information' as used in the illustrative clauses may or may not be personal data.

Definitions of de-identified, anonymised and pseudonymised data

13. Under current data protection legislation, anonymised data – data from which no individual can be identified or is reasonably likely to be identified – is not personal data and is not subject to the DPA. The ICO's 'Anonymisation Code of Practice'² explains the process of converting personal data into a 'safe' anonymised form and stresses the importance of assessing re-identification risk in particular circumstances. Although government departments or public bodies may need a power in the legislation to share and link de-identified data, provided this data is anonymised to the standard in our code, these activities are not subject to the DPA if the de-identification process has effectively anonymised the data.

Definition of personal information

14. In the illustrative clauses provided for in some of the strands, the definition of 'personal information' differs from the definition of personal data provided in the DPA. The definition of personal information appears to have been taken from section 39 of the Statistics and Registration Service Act 2007 ("SRA"). This would be a wider definition than that of personal data under the DPA. Most notably, the draft clauses define 'personal information' to include information which relates to a body corporate. Personal data, as defined in the DPA, includes information about a living person where this person can be identified from those data and other information in the possession or likely possession of the data controller. It is also not clear in the illustrative clauses if 'personal information' includes information about deceased persons, which again is not covered by the DPA. While the government may want to include a wider definition of the 'personal information' to be shared, there is potential for confusion between 'personal data' and 'personal information'. The

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http://www.ico.org.uk/for_organisations/data_protection/topic_guides/~media/documents/library/Data_Protection/Practical_application/anonymisation_code.ashx

confusion that is likely to arise may be exacerbated by the provisions in the draft legislation which identify the types of personal information to be excluded from certain of the data sharing powers. This could also have an impact on safeguards because the ICO only regulates the use of personal data defined in data protection legislation.

Definition of public authority

15. Several of the strands include a wide definition of public authority to include a person or body entirely or substantially funded from public money. This has the potential to expand the definition of public authority to include many otherwise private or third sector organisations. The proposed scope of "public authority" under the fraud and research strand proposals in particular may need to be clarified so that we can fully understand the potential information rights implications.

Safeguards

16. Large-scale data sharing will require robust compensatory safeguards; these include organisations being clear about the law through ensuring there is practical guidance, including statutory codes, which help with compliance with the law and the implementation of safeguards. We support the emphasis in the consultation on the importance of safeguards, including an extension of sanctions, statutory codes of practice, the use of PIAs and the use of pilots for the fraud and debt sharing proposals. We also welcome the proposed involvement of the ICO, for example, through requirements to be consulted on codes and through undertaking audits – although of course there will be resource considerations that must be addressed to ensure that the system of supervision is sufficiently robust to inspire public confidence.

Sanctions for unlawful disclosure

17. The consultation includes a proposed new criminal offence of unlawful disclosures which is consistent with existing sanctions for HM Revenue and Customs (HMRC), the Department for Work and Pensions (DWP) and information held by the UK Statistics Authority (UKSA) and Office of National Statistics (ONS). There are a number of open questions about this sanction including who will enforce this offence and whether it will just apply to data controllers relying on the new powers. The role of the ICO and the interplay between the new powers and existing sanctions is also not clear. It will be important to work with the ICO and others to ensure enforcement powers are sensible and do not create further confusion or conflict.

18. There are a number of enforcement tools available to the ICO for taking action against organisations who breach the DPA. They include criminal prosecution, non-criminal enforcement and consensual audits. The Information Commissioner also has the power to serve a monetary penalty notice imposing a financial penalty of up to £500,000 for serious breaches of the DPA. If an organisation or an individual successfully re-identify data, then in DPA terms they would become the data controller for that data. If they processed personal data without making relevant parties aware and there is a risk of harm to the individuals, then the Commissioner may take regulatory action, including the imposition of a civil monetary penalty up to the maximum allowable amount. However, a potential enforcement notice or civil monetary penalty may not be an effective tool in these cases. There is merit in considering whether there should be a specific criminal offence in cases of deliberate re-identification of anonymised data.
19. On some occasions it is not the data controller that is responsible for data protection breaches; it is an individual acting in contravention of an organisation's policies and procedures, or an individual who obtains information from an organisation without their knowledge or consent. Section 55 of the DPA makes it a criminal offence to knowingly or recklessly – and without the consent of the data controller – obtain, disclose, or procure the disclosure of personal data. This offence is currently punishable by fine only. Section 77 of the Criminal Justice and Immigration Act 2008 includes a provision for introducing custodial sentences for the DPA section 55 offence; this has not yet been commenced. The Information Commissioner continues to call for more effective deterrent sentences, including the threat of prison in the most serious cases, to be available to the courts to stop the unlawful use of personal data. Strengthening this sanction would make it more consistent with the proposed new criminal offence of non-disclosure.

ICO audits

20. There are references to the ICO undertaking audits of public authorities' data sharing. We would welcome discussions on these proposals; for example, whether we would need to have powers to follow the shared data across organisations and mandatory audit (assessment notice) powers to do this in certain sectors. A number of sectors such as local authorities are currently outside the scope of compulsory audit so there would need to be consideration of the scope of the audits and whether the assessment notice power would be extended to them. The ICO's powers of compulsory audit could provide more effective regulation of data sharing in these sectors but

if the audits were to be compulsory there would be resource implications for the ICO.

Codes of Practice

21. We support the use of codes of practice as a flexible instrument. Given the reliance on codes of practice to provide additional details and safeguards, it is important that the likely content of these codes is available for scrutiny during the passage of any future data sharing legislation so that the whole regulatory framework, including any limitations, is clear. It is also critical that these codes be kept up-to-date, and we suggest that a requirement be included in the provisions of the legislation to regularly update the codes.
22. The draft illustrative clauses leave the detail of the proposals fairly open, presumably relying on the codes of practice to define procedures and fill any gaps. The illustrative clauses require organisations to have regard to the relevant code of practice in sharing data. It is not always clear whether these codes will be statutory codes. Even if they are, it is not clear whether the failure to follow procedures outlined in the codes will be an enforceable offence. Important safeguards should be included in the legislation or, if this is not possible, they should be in codes of practice which are available for scrutiny during the passage of the legislation. We welcome the requirement for the Minister to consult the Information Commissioner in preparing these codes, which is included in the illustrative clauses; but in the absence of draft codes, it is difficult to appreciate how these codes will align with our own statutory Data Sharing Code of Practice.
23. In the ICO's experience, where organisations have been required to work with multiple codes of practice in their sectors, and the advice in these codes conflicts this has caused confusion and uncertainty. It will be important to ensure that any new code minimises confusion and the risk of providing conflicting advice. Organisations using these proposed data sharing powers may also find that other legislation to which they are subject conflicts with the permissive powers and/or codes of practice. It is not clear from this consultation document how such conflicts will be resolved.

Privacy Impact Assessments (PIAs)

24. We note that organisations will be required to prepare PIAs in line with our code of practice and publish them for public scrutiny. We welcome this safeguard, and note that it could help data controllers prepare for new requirements for DPIAs under the GDPR. There is no statutory requirement to produce PIAs at present; how such a duty would be

enforced requires thought. Although including the requirement within any new legislation is preferable, it may be possible to have a requirement in a statutory code of practice. To ensure this happens, any legal provisions requiring a code could make it clear that its provisions must include requirements on the undertaking and publication of PIAs.

25. The GDPR will require DPIAs for certain activities and prior approval from the national supervisory body, which is likely to be the ICO in the UK. The ICO will also be required to produce a list of processing activities for which data controllers will be required to prepare a DPIA. Beyond these future requirements, however, is not clear who, if anyone, will be responsible for reviewing the PIAs or what will happen if the assessment reveals a substantial privacy risk that cannot be sufficiently mitigated. If there is to be oversight, then resourcing of the eventual supervisory body may be an issue for consideration.

Transparency

26. We welcome the focus on transparency in various parts of the consultation paper, such as the recommendation that PIAs should be published proactively. Transparency and accountability are important elements of building trust and confidence in the government's use of data but transparency and clarity for individuals is also very important. Combining different information from different sources can create a very detailed picture of an individual's affairs and thought will have to be given to how government is going to explain this and its likely consequences. The ICO has consulted on a revised Privacy Notices Code of Practice³ in order to provide more guidance on how to make privacy notices more engaging and effective, and to emphasise the importance of providing individuals greater choice and control over what is done with their data where that is appropriate. The ICO has developed this code with compliance with the GDPR in mind, as well as where the law stands today. The GDPR will require enhanced transparency and accountability by organisations.

Big data and analytics

27. Big data increases the risk that individuals may be re-identified from apparently anonymised datasets. If an organisation or an individual does this, then in DPA terms they become the data controller for that data. They take on all the responsibilities of a data controller, including telling the individuals concerned that they are processing

³ <https://ico.org.uk/about-the-ico/consultations/privacy-notices-transparency-and-control-a-code-of-practice-on-communicating-privacy-information-to-individuals/> The consultation closed March 2016, a revised code will be issued later in 2016.

their personal data. If they process personal data without their knowledge, and there is a risk of harm to the individuals, then the Commissioner may take regulatory action, including the imposition of a civil monetary penalty of up to £500,000. We propose that there is merit in considering whether the introduction of a specific criminal offence would be more appropriate and provide a stronger deterrent for those who deliberately seek to re-identify individuals. The ICO has also welcomed the work of the Cabinet Office on data science and ethics, in particular the ethical framework.

Health and social care data

28. We note that the current proposals exclude the use of health and social care data, in part due to the impending publication of Dame Fiona Caldicott's consent review. The DPA does not prevent sharing health and social care data, provided this is consistent with the data protection principles, including a legal basis and relevant Schedule 2 and 3 conditions for doing so. The inclusion of health and social care data may be essential to success in certain strands, particularly Improving Public Services. Principle 3 of the DPA in particular is worth considering, and whether excluding certain categories of data would jeopardise the adequacy of processing, eg for improving public service delivery and research. As sensitive personal data, it will be important to include appropriate safeguards, but in principle there is no data protection barrier to including health and social care data. The GDPR includes provisions concerning processing of health data specifically – and special (ie sensitive) personal data more generally – that should be considered if health and social care data is included.

Comments on detailed proposals

A – Improving public services

i) Improving public service delivery

General Comments

29. The proposal provides a permissive power for sharing data for more targeted public service delivery. The power will relate to specified public authorities. In our experience, public authorities involved in this delivery often already have a legal gateway for sharing information and the power to share does not have to be expressly provided in law. Consequently, many initiatives to improve public service delivery, such as Troubled Families, are able to proceed under the current legal framework. This power will be helpful insofar as it provides certainty

of the legal gateway; however, it may not resolve several key challenges, such as reluctance to share with private and third sector organisations. It also does not resolve the issue of finding appropriate conditions for processing under the DPA, which has been a challenge for some programmes.

30. Programmes such as Troubled Families often involve multiple purposes over several stages and not just the intervention itself. This includes data processing to narrow down those individuals in need of the intervention, and evaluation of the programme, which are different purposes and often present different privacy risks. If the proposals are intended to cover the full scope of such programmes, then it will be important to ensure this is clear in the legislation and that each stage is addressed in the required PIAs and the Code of Practice for this strand.

Specific questions

Q1. Are there any objectives that you believe should be included in this power that would not meet these criteria?

31. In the consultation paper, one of the two objectives is "improving the ability to identify families who would benefit from the Troubled Families programme". This implies a fairly narrow scope, but the illustrative clauses seem broader, ie "identifying individuals or households who face multiple disadvantages and enabling public services to be provided to such individuals and households to be tailored to their needs". Further clarification, possibly through the open policy making process, would be helpful.

Q2. Are there any public authorities that you consider would not fit under this definition?

32. If health and social care data is included, this list of public authorities will need to be expanded to include relevant health bodies.

Q3. Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

33. To avoid confusion, the definition of 'public authority' should not be expanded to include private and third sector organisations, but there could be value in expanding the scope of the power to include such organisations, when it is necessary to achieving a particular purpose. The absence of a legal gateway for third sector organisations is often cited as a barrier in data sharing initiatives. Some public authorities do not feel comfortable sharing with organisations without a legal gateway. Whilst a statutory gateway provides legal certainty when a

public authority shares personal data, the data protection principles would allow the sharing anyway, provided it is done in compliance with the data protection principles - and provided that the sharing is necessary for the public authority's or government department's statutory or common law purposes and is not therefore *ultra vires*. Given the growing importance of private and third sector organisations in delivering certain public services and the reluctance of public authorities to share without an explicit gateway, it is a matter for the government to decide whether expanding the scope of this power would be an appropriate measure. As noted in the consultation paper, this could also provide consistency in the conditions and safeguards across public service delivery.

Q4. Are these the correct principles that should be set out in the Code of Practice for this power?

34. The principles refer to 'additional safeguards' in addition to those existing in legislation such as the DPA. It is not, therefore, clear whether the DPA will be covered in the Code of Practice. Given that our Data Sharing Code of Practice is general in nature, it would be helpful for the code to provide good practice measures to comply with the DPA, focused on the delivery of tailored public services.

ii) Providing assistance to citizens living in fuel poverty

General Comments

35. We recognise that this measure is about efficient targeting of public services to those with most need. Data protection should not be a barrier to necessary and appropriate data sharing to assist those who are living in fuel poverty. The primary barrier at present appears to be the lack of a legal gateway to share individuals' data to allow matching across data sets to occur, which this measure addresses.

36. We welcome this proposal as an example of a 'constrained power' for limited purposes. This approach should assist in gaining public support, as it provides some reassurance that data permitted to be matched for this specific purpose will not be used to disadvantage individuals.

37. The number of individuals that could be affected by this proposal is also unclear because the definitions are left quite open. The definition of fuel poverty in the draft clauses (at section 1(3)) does not specify what a 'lower income' and 'reasonable cost' is. Low incomes and higher-than-typical heating costs are blamed for the most severe

cases of fuel poverty. It therefore appears that millions of individuals are likely to be affected by fuel poverty, but the proposal to share these individuals' data has not been subject to the same level of scrutiny as other strands because it was not part of the open policy making process.

Specific questions

Q5. Should the Government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

38. We support the approach of minimising the extent of data sharing outside the scheduled public sector organisations as a safeguarding measure. The consultation paper states that non-public sector organisations will be provided with an eligibility flag and the eligible individual's name and 'equivalent unique identifiers'. We are interested in what these unique identifiers will be and suggest this could be part of the open policymaking process. We would also support the proposed safeguard to limit the purpose for which this information is being used, but note that the proposal also suggests a further purpose, ie promoting energy efficiency measures.

39. The objectives in the draft clauses also suggest a broader remit than in the consultation paper. The objective at 1(2)(b) is: 'reducing the energy costs of, or improving the health or well-being of, people living in fuel poverty'. This may suggest that the manner in which assistance is provided to individuals extends beyond the automatic discount applied to energy bills as outlined in the consultation document. The definition of well-being is left very open, which could lead to wider application of the powers than originally intended. This is an issue that the government might want to consider further.

Q6. Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

40. From an information rights perspective, the two purposes are separate proposals with different considerations. Providing energy bill rebates automatically through data sharing within the government has a clear benefit for individuals, and it makes sense to share that information to determine eligibility. Even though the assistance is automatic, it will still be important to tell individuals how their data is being used and who it is being shared with in order to comply with the requirements of the DPA, including the first principle.

41. Although providing information about energy efficiency could also benefit the targeted individuals, it is not clear in the consultation paper how this information will be conveyed and whether it will engage PECR. It may not be within individuals' expectations to receive this information from their energy providers, which are private companies. If the provision of information constitutes direct marketing under PECR, it is not clear from this consultation how consent will be obtained. Under the forthcoming GDPR, the establishment of clear consent will be even more important.

Q7. Are there other forms of fuel poverty assistance for citizens that should be considered for inclusion in the proposed power?

42. It is not for the ICO to determine what other forms of assistance should be considered. However, where other forms of assistance are considered, it will be essential to consider whether new purposes are being introduced and how personal data is used to achieve these additional purposes. Beyond the legal gateway, any additional forms of assistance will still require relevant conditions for processing personal data, including for sensitive personal data (where applicable). The measures will also need to be fair and consistent with the expectations of the individuals concerned, and organisations providing assistance will need to ensure that individuals are aware of how their data is being used and shared for the provision of these additional assistance measures.

iii) Increasing access to civil registration information to improve public service delivery

General Comments

43. This proposal was added at a relatively late stage of the open policy making process and has not been subjected to the same degree of scrutiny as other measures. As is the case with the other measures, the emphasis in the legislative clauses is on which organisations will be sharing the data, rather than what data will be shared and for what purposes. The sharing of data for more convenient and secure citizen access to government services is likely to enjoy more support than vague proposals for bulk sharing of data to assist public authorities to fulfil their functions. There is also justification for sharing information to track down forged or altered certificates. Civil registration information can be very sensitive, including information on adoptions and still births. We welcome the requirement for a statutory code of practice, to be prepared in consultation with the ICO. Given this is a discretionary power for the Registrar General, it may be helpful to establish a Strategic Steering Group (SSG) along the lines of that

proposed for combating fraud to help decide whether data sharing proposals are justified and proportionate.

Specific questions

Q8. Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

44. The government's plan to reduce the circulation of official identity documents, and reduce the potential for fraud, is welcome; and the purpose of providing public services through more convenient and secure mechanisms is likely to have broad public support. For example, we are aware that the sharing of data between the Passport Office and DVLA, allowing drivers' identities to be verified without the inconvenience of sending sensitive documents through the post has proved to be popular with drivers. The wording of the current proposals, in enabling 'access' for these purposes does not provide clarity on the method of transfer as proposals refer to 'verification or sharing' of data.
45. The verification of birth and death records using Application Programming Interfaces (APIs) – accessing a central record in order to confirm that the event took place – would minimise the amount disclosed and fit better with DPA. If access did involve sharing, any statutory code of practice would need to investigate thoroughly the potential for any disclosure to infringe upon a data subject's article 8 rights to privacy.
46. Current statutory safeguards apply around the disclosure of birth records for adopted individuals. There are similar safeguards around gender recognition records; but only where an individual has lived with their acquired gender for at least 2 years, and applied to the Gender Recognition Panel for a new certificate; for applications by the standard route. Where the purpose is confirming if an event took place, marriage records may not be as reliable a source as birth and death records. As divorce records are held by Her Majesty's Court & Tribunal Service (HMCTS), not the General Registrar's Office (GRO), additional linking would be required in order to provide assurance on the accuracy of the data, depending on the purpose required.
47. Any sharing of marriage or civil partnership data could require an additional condition for processing as this data by its nature discloses sexual orientation. In most cases this is also likely to disclose data related to two data subjects, both of whom would require fair processing.

48. Any code and PIA process would need to cover the issues above, specifically in the context of the first data protection principle where it applies and whether data was processed fairly. Improving public services may not always align with the wishes or expectations of individuals, specifically in the context of bulk sharing with no meaningful opportunity to provide or withdraw consent.

Q9. Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

49. The Tell Us Once service has always been a voluntary service based on the families providing consent. We are not clear whether the proposed service will replace this service.

50. It is worth noting that the DPA cannot be relied upon as a safeguard for death records, where they do not link to third parties who are natural living persons, as this information does not meet the definition of 'personal data' in the DPA. A power to share death records in bulk for the purpose of list cleaning could work similarly to the current Disclosure of Death Registration Information (DDRI) scheme provided by GRO. DDRI has narrow gateways permitting sharing for the specific purposes of 'to prevent, detect, investigate or prosecute offences'.

51. As currently drafted, bulk sharing for 'relevant private companies' (as referred to in the attached Impact Assessment) for purposes such as fraud prevention would provide broader access than currently possible the DDRI with fewer safeguards. DDRI can disclose to specific types of organisations (rather than relevant organisations) with additions to the list possible by order. DDRI also allows GRO to add requirements to a disclosure as a condition on primary legislation (s13(4) Police & Justice Act 2006). These requirements can relate to restricting the onward disclosure of bulk data from license holders, and specifying retention schedules. Finally, GRO can require quarterly data from licence holders to evidence their use of data under their license agreement remains consistent with the specified purpose of disclosure. It should be noted that the level of safeguards deemed adequate for a death record may not be adequate for records of other life events.

52. The consultation document references a mandatory requirement for 'deletion of bulk data once data has been used for that purpose'. Further consideration of definitions for this safeguard may be required in the Code of Practice, as data could be legitimately held by authorities for the same purpose or function for varying lengths of time. Although this question refers to death records specifically, the

illustrative clauses as drafted could allow for the sharing of other life event records. Some proposed applications will use bulk data to identify patterns which may suggest fraud, searching for a causal link between the individual and the commission of offences. This could have implications for data controllers, who would be unlikely to satisfy a s29 or s35(2) exemption from subject access, and again raises concerns around accuracy and fairness for data subjects, many of whom would not be under investigation themselves. Such processing of personal data could engage issues of privacy and article 8 ECHR rights, as well as the ability for data subjects to assert their rights under the DPA, or the forthcoming GDPR (eg the right to subject access and the right to object to automatic processing).

B – Tackling fraud and debt

i) Combating fraud against the public sector

General Comments

53. As the paper acknowledges, there are numerous existing legislative gateways that enable public authorities to share data for the purposes of combating fraud. We have observed that frequently these provisions are under-used or ignored. During the open policy making process, civil society groups felt that further evidence was needed on data sharing in this sector. We support the use of pilots and the emphasis on post-legislative scrutiny where the relevant Minister would assess the success of the projects and determine whether it should proceed or be terminated. We were not clear whether there would have to be further legislation enabling the pilots to become permanent data sharing arrangements. Any evaluation of the pilots should consider privacy and data protection compliance, and we recommend that a further PIA should be undertaken at that point.

54. We welcome the proposed safeguards in the consultation document, in particular the requirement for a statutory code and the proposal that the legislation states explicitly that data cannot be disclosed under the new power if it contravenes the DPA or Part 1 of the Regulation of Investigatory Powers Act 2000. It is also proposed that organisations will have to make a business case for any data access arrangement. Information in the business case will include methodology, costs and benefits etc. It would be helpful if organisations also considered the privacy impact at this point and were assisted in considering privacy risks and the justification for their proposal in detail. The creation of the SSG within this measure is also a positive step and would help improve oversight over what could be extensive and privacy-intrusive data sharing. We see that it is proposed to include representatives from civil society organisations and other independent observers, and

the ICO would be happy to participate in that capacity if it was considered useful.

Specific questions

Q10. Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

55. We consider that the code of practice should require regular reviews of the pilots, particularly given the likely development of big data and use of analytics. There will also be a need to ensure prompt resolution of false positives and rectification of data so they do not recur. It may be necessary to end pilot schemes early if they result in high false positive rates, especially where inaccurate information results in serious consequences for individuals, particularly if they have done nothing wrong.
56. A clause requiring the code of practice to be reviewed regularly on a set timescale would enable novel datasets or new data matching techniques to be used in a timely manner without requiring government to act in contravention of a statutory code. There are current codes of practice governing data matching that have not been updated for some time, and a statutory requirement to review and reissue the code would guard against this and provide an additional safeguard, perhaps including parliamentary scrutiny.
57. Use of APIs would require greater consideration of information security under the DPA and a code of practice could usefully remind people of this. A short, blanket retention period for data that is shared could be considered under the code of practice to ensure that published information is disposed of by the public authority with which it is shared on an appropriate timescale.
58. The code of practice would appear to be applicable to the data of bodies corporate. This data could be shared without contravention of the DPA as it is not personal data under that Act or under the proposed GDPR. If ICO audits are to be a safeguard, they could either be of a sample of organisations; or all organisations involved could be audited. This could have resource implications for the ICO and a timescale would be useful in the code of practice to indicate the frequency of audits.

Q11. It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed?

59. Consideration would need to be given to how long data could be regarded as suitable for the purposes being pursued. Retention schedules for different types of data can drive changes in how data is recorded and therefore its relevance to the task. Further research into the life cycle of government data, and the period for which it remains a useful and usable data resource, would need to be considered in setting a time limit.

ii) Improving access to data to enable better management of debt owed to the public sector

General Comments

60. The illustrative clauses governing the debt measures are very similar to the clauses governing the fraud measures. However, among other differences, under the DPA the condition for processing data for fraud combating purposes is different to the condition for processing data for the purposes of managing public sector debt. The code of practice would have to treat fraud and debt as separate measures because of this.

Specific questions

Q12. Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?

61. Again the proposal for a business case to be produced should encourage full consideration of the proposals; but we also want to see privacy considerations built in at this stage, in particular whether proposals are justified and proportionate – not just whether they would reduce debt. Any proposed data sharing would have to be backed up by clear purposes for sharing between government departments, for example to gain a single debtor view and therefore help debtors. Again a pilot programme for this measure may be helpful, and any evaluation of the pilot should include privacy and data protection issues. We are also not clear whether the data sharing can

go ahead after the pilot or whether there would need to be further legislation for it to continue. The consultation paper does not mention any governance of the debt strand other than a review of the power; something similar to the SSG proposed for fraud might be useful here.

C – Allowing use of data for research and for official statistics

- i) Access to data which must be linked and de-identified using defined processes for research purposes

General Comments

62. This proposal introduces a number of safeguards to ensure processing of personal data for research purposes is done in a secure, justified and proportionate way. The draft illustrative clauses state that data cannot be supplied if it contravenes the DPA. De-identified data is a term widely used and understood within the statistical and research communities, but some practitioners working outside those fields may not be clear whether some of the information mentioned in the proposals and illustrative clauses is personal data for the purposes of the DPA.
63. Some pseudonymised data can be anonymous, the most obvious case being where the personal data from which the pseudonymised data was generated has been deleted and where there is no other 'matchable' data that might allow re-identification to take place. There is a spectrum of personal identifiability based on the nature of the information itself and on other factors, such as the availability of matchable information. We accept that this can sometimes make it difficult to draw a clear distinction between personal data and non-personal data. As described in the proposal, it appears that some 'de-identified data' may be pseudonymised data. If the intention is that this be non-personal data for the purposes of the DPA, then understanding the legal concepts and applying the tests outlined in our Anonymisation Code of Practice would help ensure that standard is met. Whether the data is personal data or anonymised (and thus no longer personal data) may need to be evaluated on a case-by-case basis.
64. We would also note that the objective of the proposal is to enable research for public benefit, but such research often requires the processing of personal data. Such processing can be done in a way that complies with the DPA. In our experience, many public authorities are reluctant to share personal data for research purposes, even when such sharing could be done lawfully under the DPA. This reluctance can be due to a lack of understanding about data protection law, or arise from concerns about compliance with other laws, such as the

common law duty of confidence. This contributes to uncertainty about when personal data can be shared, so the proposals could provide more clarity for organisations regarding what data they can share, and when they can share information that is fully anonymised versus pseudonymised or de-identified.

65. Under the proposal, accreditation is recommended for indexers, researchers, access facilities and the research itself, with the UKSA as the proposed accreditation body. It will be important at the outset to establish which organisations are data controllers and which are data processors in these relationships in order to clarify the data protection responsibilities of the bodies involved. Given this extensive remit, there are a number of practical matters regarding this accreditation that will need to be addressed. For example, at present, the draft illustrative clauses do not include a mechanism to monitor/audit these facilities once they are accredited. This is a key issue to consider once facilities are accredited and could require significant resources.
66. There are further safeguards that could be considered, for example, if the accredited facility does not meet the standards required then it should be possible to remove the accreditation so that the relevant organisation cannot carry out work until it is successfully re-accredited, or other appropriate sanctions applied (eg withdrawal of funding). Within the accredited facilities there should be oversight of the de-identification process, perhaps at Senior Information Risk Officer (SIRO) level.
67. Where data sharing is being done for the public good there should be a high degree of public openness. We would thus support measures to ensure transparency in this area, eg publishing a register of the datasets flowing in and out of accredited facilities.
68. The proposals include sanctions for unlawful disclosures and restrictions on further disclosure. Clarity is needed on whether these sanctions will affect current data sharing agreements that enable such disclosures, consistent with current law. We would also note that the legislation will need to be future-proofed, or reviewed under a sunset clause, to respond to the forthcoming changes under the GDPR, which has several provisions directly relevant to research and statistics.
69. With the rapid rise of big data, data science, open data and data sharing, there is a valid case that there is an increased the risk that individuals may be re-identified from apparently anonymised datasets, or more likely a combination of personal data and de-identified data. The incentives to deliberately and negatively attack anonymised data are likely to become stronger as data becomes an increasingly valuable commodity, so we recommend that the government should

consider whether stronger deterrents and governance safeguards are necessary. It is also worth noting that re-identification risk can be mitigated by ensuring only the data necessary for a particular purpose is released (ie data minimisation).

70. If an organisation or an individual successfully re-identifies data, then in DPA terms they would become the data controller for that data. They would take on all the responsibilities of a data controller, including telling the individuals concerned that they are processing their personal data. If they processed personal data without their knowledge, and there is a risk of harm to the individuals, then the Commissioner may take regulatory action, including the imposition of a civil monetary penalty of up to £500,000. However, a potential enforcement notice or civil monetary penalty may not be an effective tool in these cases. We would actively support the introduction of a re-identification criminal offence which would provide a stronger deterrent for those who deliberately seek to re-identify individuals. This was an issue we raised in the recent Science and Technology Select Committee Inquiry into big data and the Committee supported the case for a re-identification offence in their recommendations⁴.

Specific questions

Q15. Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

71. If the government decides to introduce charges, then this could be done on the basis of reasonable recovery of costs.

Q16. To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

72. As a matter of transparency, it would be good practice to publish such details where this complies with data protection requirements. We have supported the reasons for rejection and the name of the organisation being made public but would not go so far as to name individual researchers. In addition, the criteria that will be used when considering requests should also be published so there is a shared understanding of what aspects will be considered. Publishing a register

⁴ <http://www.publications.parliament.uk/pa/cm201516/cmselect/cmsctech/468/46802.htm>

detailing the datasets flowing in and out of the accreditation body would also further the goals of consistency and transparency.

Q17. What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

73. While specification of the exact principles is not within our remit, we note that there are several provisions in the GDPR relevant to processing data for public benefit. The full effect of the GDPR is not yet known, but any new data sharing legislation should be robust enough to accommodate future changes. The GDPR specifies that where processing is necessary for the performance of a task carried out in the public interest, the processing should have a basis in Union or UK law. The Regulation does not, however, define what is meant by the public interest so it will be helpful to outline what this means for the purposes of these proposals.
74. Under the GDPR, the UK will be allowed to introduce national provisions to further specify when the public interest provision applies. There would be advantages in having a national provision here, in terms of legal certainty and the introduction of statutory safeguards. If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, UK law may also determine and specify the tasks and purposes for which the further processing shall be regarded as compatible and lawful, which could include the prohibitions on further disclosures proposed here. However, it is also notable that, in cases where the data is being processed for purposes other than the one for which it was collected, this processing could be considered lawful if it is for scientific and historical research purposes or statistical purposes.
- ii) Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

General Comments

75. Current barriers to data sharing discussed in the document are related to current legislative barriers outside the DPA. Moving to a more flexible system to accommodate data sharing is not inconsistent, in principle, with the DPA, provided appropriate safeguards are in place. An important safeguard is provided in the illustrative clauses, wherein public authorities need not comply with an order to disclose information if that would contravene the DPA. The proposed amendment to the SRSA to give public authorities the power to disclose information to the UKSA when required to exercise its

functions likely means public authorities could find a relevant condition for processing under the DPA.

76. This measure discusses the integrity, quality, and supply of information, and where this is personal data, there is also an interaction with the DPA that is worth noting. Principle 5 of the DPA requires that personal data should not be retained for longer than necessary, which may limit the usefulness of this measure, unless the data is processed only for research purposes, in which case it can be kept indefinitely (s33(3)). Principle 4 requires that personal data is accurate and, where necessary, kept up to date. This requirement is separate from, but complements, the emphasis on providing accurate information and the proposed criminal penalties for providing misleading information.

77. We would also note that the legislation will need to be future-proofed to respond to the forthcoming changes under the GDPR, which has several provisions directly relevant to research and statistics.

Specific Questions

Q18. Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

78. This question is outside our remit.

Q19. If your business has provided a survey return to the ONS in the past we would welcome your views on:

(a) the administration burden experienced and the costs incurred in completing the survey, and

(b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics.

N/A

Q20. What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to processes that collect, store, organise or retrieve data?

79. The recommendation to consult with the Information Commissioner is important, as there may be further interactions between the proposals in this strand and the DPA that need to be clarified. For example, public authorities may be required to consult with the UKSA when making changes to processes for collecting, organising, storing or retrieving information. It will be important to consider compliance with the DPA principles explicitly in such a consultation. The process for doing so, and the relationship between the UKSA and the ICO in this process, could be clarified in the Code of Practice.

Information Commissioner
April 2016

Responding to the consultation

Your details

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity.

We will publish our evaluation of responses. Please note that we may publish all or part of your response unless you tell us (in your answer to the confidentiality question) that you want us to treat your response as confidential. If you tell us you wish your response to be treated as confidential, we will not include your details in any published list of respondents, although we may quote from your response anonymously.

Name (optional): Emma Christie

Position (optional): Economist

Organisation name: Greater London Authority (GLA)

Address: City Hall, The Queen's Walk, London, SE1 2AA

Email:

[REDACTED]

Telephone (optional):

[REDACTED]

Would you like us to treat your response as confidential?*

If you answer yes, we will not include your details in any list of people or organisations that responded to the consultation.

Yes No

Is this a personal response or an official response on behalf of your organisation?

Personal response

Official response

If you ticked “Official response”, please respond accordingly:

Type of responding organisation*

Business

Charity

Local authority

Central government

Wider public sector (e.g. health bodies, schools and emergency services)

University or other higher education institution

Other representative or interest group (please answer the question below)

Type of representative group or interest group

Union

Employer or business representative group

Subject association or learned society

Equality organisation or group

School, college or teacher representative group

Other (please state below)

Nation*

England

Wales

Northern Ireland

Scotland

Other EU country: _____

Non-EU country: _____

How did you find out about this consultation?

Gov.uk website

Internet search

Other

May we contact you for further information?

Yes No

Overarching comments

The GLA strongly believes that Government needs to do more to unlock the power of data, helping organisations to make better decisions and operate more efficiently. Greater sharing of information between public authorities will allow them to improve the lives of citizens and help the economy flourish. To this end, in March 2016, the GLA launched the London City Data Strategy. The aim of this strategy is to give London the most dynamic and productive city data market in the world by reducing friction in the sharing and value-driven exploitation of city data to a minimum. The GLA seeks to recognise city data as part of the capital's infrastructure, using it to save money, incubate innovation, and drive economic growth, helping London to achieve global renown for data impact. Within this Strategy, we have committed to - as a priority action - pushing for broad access to data across government departments e.g. HMRC and DWP) for London, to overcome issues which currently prevent further data sharing opportunities outside departmental silos and which stand in the way of value creation. Our full strategy is available here: <http://data.london.gov.uk/dataset/data-for-london-a-city-data-strategy> and addresses many of the other points raised in this consultation.

The GLA therefore welcomes this consultation on the better use of data, and appreciates the opportunity to respond.

This said, the GLA is disappointed by the limited scope of this review. The opportunity to make legislation to support the sharing of primary data is a rare opportunity and should not be wasted. A possibility exists to deliver wide ranging and practical benefits to public bodies and that this review largely rules out the use of data sharing for analysis as a legitimate way to 'improve public service delivery' is both disappointing and representative of a wasted opportunity. The GLA would urge the Government to reconsider the scope of the review so that the following changes to legislation are fully reflective of the changes that we need.

The ODI's response to this consultation also expresses scepticism towards the government's 'piecemeal' approach, fearing that this will not improve data sharing within government in ways that maximise value inside and outside the public sector. The ODI also points out that it is unclear how these proposals fit within a wider government data strategy and makes a number of recommendations, and comprehensively address 'what's missing' from the consultation. The GLA would urge the government to strongly consider the recommendations put forward by the ODI and wishes to echo the sentiments expressed in their response: <https://docs.google.com/document/d/1xj5fZHkxwGwpGNjeyoYviZhbYYNbBwO8QqyZyQfzJI/edit?pref=2&pli=1#>.

Of particular importance to the GLA is our access to administrative data sources in general, but at the moment, particularly the Inter-Departmental Business Register (IDBR). The IDBR provides a comprehensive list of UK business and is used by government for statistical purposes. At present, this data is available to both central government and local authorities, but no access has been granted to the GLA. This appears to be as a result of a legal oversight whereby as we are neither a 'government department' nor 'local authority', we are not permitted to use this data,

despite having many overlapping roles with both. Access to this data, and other administrative data sources, would be hugely beneficial to the GLA in allowing us to better support London's economy and its businesses and is something the GLA feels should have been addressed in this legislation. In drawing up legislation on data sharing, it is important that this issue is addressed to correct for access by strategic bodies, such as the GLA and others, who may be affected in the future by the same issues e.g. Greater Manchester. The GLA would like to see this review address the issue of data access more generally in terms of our own access to all central government (DWP/HMRC/etc.) data sources, our status as a governing body, and the protocols by which we can apply for these data.

In addition, the GLA would like to see this consultation address the security measures that are needed to access and handle data. The GLA believes it is important that recipient organisations should be provided with details of a set of common sense security measures that have to be complied with in order to gain access to the data. At present, every time the GLA requires a set of data from a Government department, we are obliged to fill in a bespoke set of forms specific to that department. Having a more joined up approach to this, for example a single set of forms to fill in annually for all data sets we require, would be sensible.

The GLA our, ourselves, currently in the process of building out own system to better facilitate secure data sharing. This will work similarly to our public data store (<http://data.london.gov.uk/>) in so far as it collates and catalogues available data to make it searchable and accessible from a single point, while also providing the full metadata. The interface will be open source and cloud based, accessible through a web interface to address the needs of secure access by multiple users and periodic peaks in processing needs. This will allow us to share data non-public data securely between ourselves, the boroughs, London & Partners, and other city data market partners and is expected to go live in June 2016.

Questions

Improving public service delivery

Question one: Are there any objectives that you believe should be included in this power that would not meet these criteria?

No

Yes

If yes, please explain your reasons.

The Greater London Authority (GLA) is of the belief that access to data, including increased data sharing, is hugely important for statistical and research purposes in allowing public bodies to design better policy. A more accurate and timely evidence base would allow policy makers to make better informed decisions and would reduce the burden on public bodies to collect their own data.

A greater understanding of economic and social trends would allow the public sector to respond more appropriately to the pressures facing society, and as such, enhancing this understanding should be one of the objectives included in this power.

The current scope of objectives (fuel poverty and Troubled Families) is very restrictive and we believe represents a wasted opportunity to really help the UK's public bodies by enabling them to produce better statistics from the existing data.

Also of concern to the GLA that while these arrangements for data sharing can be made, there is no legal requirement or departments to share data which could limit the impact of legislation in this area.

As part of our commitment to increasing data access, the GLA publishes London specific data on the GLA data store: <http://data.london.gov.uk/>. While the GLA is listed as a public body who may benefit from these legislative changes, with no mention of the IDBR, and such a limited scope generally, it is not clear that the GLA will directly benefit from these proposals in their current form.

Question two: Are there any public authorities that you consider would not fit under this definition?

No

Yes

If yes, please explain your reasons:

The GLA believes that any increase in data sharing between public authorities is beneficial and would only serve to increase their understanding of trends, allowing them to respond more effectively. Any public authority who can sign up to the

necessary measures to protect data should be able to benefit from these data sharing measures.

In instances where the public body might lack appropriate systems security, it is important that there is a mechanism through which they might be able to access it at a more aggregate level. The cost of de-identifying the data would necessarily have to be borne by the public authority making the request.

We also believe it is important that any increase in access to data does not hinder the current level of access provided to the GLA.

Question three: Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

Any data sharing that allows service providers to better tailor and target their service will be good for efficiency and effectiveness and will ultimately benefit the individual using the service. Any non-public sector body who can sign up to the necessary measures to protect data should be able to benefit from greater sharing of data.

It is, of course, hugely important that appropriate safeguards are put in place to ensure that the data is only used for the approved research purpose, and that any non-public sector bodies are clear on the circumstances and purposes for which such data may be shared. It is important to make sure that data sharing for the purpose of benefitting individuals is not used in other services provided by the same body to build databases or cause harm (e.g. by affecting their credit rating). Data must also be sufficiently de-identified/aggregated such that it is suitable for the body making the data request.

Again, any increase in powers in this area must not restrict the current level of access awarded to the GLA and others.

Question four: Are these the correct principles that should be set out in the Code of Practice for this power?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

N/A

Providing assistance to citizens living in fuel poverty

Question five: Should the government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

The Government should share relevant information with any non-public sector organisations that provide a service to citizens, including but in no way limited to those living in fuel poverty.

Again, appropriate safeguards will need to be put in place to protect individual data.

Question six: Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

- Strongly agree

- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

N/A

Question seven: Are there other forms of fuel poverty assistance that should be considered for inclusion in the proposed power?

- Yes
- No

If yes, please explain your reasons:

N/A

Access to civil registration information to improve public service delivery

Question eight: Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

Yes. However, the GLA believes that a government department, or public authority, should also be able to access birth details for the purpose of statistical analysis. Data such as this could help local authorities adapt quicker to population changes e.g. provision of right number of school places.

Question nine: Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to a deceased person)?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

Bulk registration should be shared so that public authorities' records are kept up to date but also for the purpose of statistical analysis.

Combating fraud against the public sector through faster and simpler access to data

Question ten: Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

- Yes
- No

Please explain your reasons:

N/A

Question eleven: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed?

N/A

Improving access to data to enable better management of debt owed to the public sector

Question twelve: Which organisations should government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtor who owe multiple debts?

N/A

Question thirteen: How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

N/A

Question fourteen: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed??

N/A

Access to data which must be linked and de-identified using defined processes for research purposes

Question fifteen: Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

Yes

No

The GLA believes that the provision of data at no cost is not only in keeping with international precedents but of vital importance in ensuring that authorities are able to undertake necessary research to better inform policy decisions. Any additional burden to public authorities, be it administrative or financial, is unwelcome.

However, we recognise that making data available for sharing is not cost free and in order to encourage public authorities to increase the amount of data they are prepared to share, it is appropriate to charge others on a cost recovery basis. Models such as the Office for National Statistics commissioned Census tables provide a good example of affordable cost recovery for data provision.

Question sixteen: To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Yes

No

In the interest of information sharing, the GLA would support the publication of details of rejected applications and the reasons for their rejection. In addition, such information could help to inform other potential applicants and increase the quality of subsequent applications, saving both the UK Stats Authority and the applicant, time and money.

Question seventeen: What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

If personal and sometimes sensitive data are being shared without individual consent it should be the responsibility of the receiving body to provide a case to demonstrate the public benefit. A good example of this is the Department for Education's National Pupil Database which has shared data with the GLA to develop a number of education-related outputs for the benefit of London, such as the London Schools Atlas.

Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

Question eighteen: Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

Yes

No

N/A

Question nineteen: If your business has provided a survey return to the ONS in the past we would welcome your views on:

a) the administration burden experienced and the costs incurred in completing the survey

b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics

N/A

Question twenty: What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to the processes that collect, store, organise or retrieve data?

N/A

----- Forwarded message -----

From: Lynda Creek [REDACTED]
Date: 22 April 2016 at 18:37
Subject: Better Use of Data in Governmentm - response to consultation
To: "data-sharing@cabinetoffice.gov.uk" <data-sharing@cabinetoffice.gov.uk>

Hello,

Although I am the Fraud and Data Manager at South Somerset District Council I am not responding in this capacity as time did not allow for the internal consultative process to be undertaken whereby an official response could be sanctioned. I am therefore responding in my own right as a lawyer and data protection practitioner. I trust that is acceptable and set out my comments and responses to questions 1-11.

I also include, as attachments, the views from 2 members of my team and again these are not the authority's views but are, nevertheless, a useful addition to the debate so I trust you will find them helpful.

If you have any queries about any of the comments made please let me know

Best wishes
Lynda Creek

Comments

In general I see the proposals as a useful adjustment to the existing framework for data sharing however, it is arguable that they do not go far enough in easing the pathways to sharing data for the public good.

In essence a clearer legal gateway, where the presumption is that data can be shared for those purposes laid down in the provisions, and where a refusal to share would be by exception where a valid case can be made to withhold, would be preferable.

There is a real risk, in my view, that these changes, although welcome, will not be enough to increase the willingness to share data and this willingness is needed to achieve the objectives set out in the paper. Public authorities will be deterred by the amount of work needed to facilitate the data sharing - completing privacy impact assessments (PIAs), considering the extent to which the data shared is proportionate etc. etc – and may continue to feel it is safer to say no (especially if the problem to be addressed isn't their responsibility!).

As we will still have the Data Protection Act (and new DP Regulation), RIPA and Human Rights and common law duties to meet as safeguards, a clear pro-active gateway for sharing, for prescribed purposes. would have been preferable.

In response to the specific questions asked I have made the following responses although time has only permitted me to cover up to question 11 although in general the same points would apply to the proposals re debt. I have not covered the statistical questions.

Q1 in (b) much depends on how wide the word 'benefit' is to be defined – would access to grants e.g. to better insulate homes; or a reduction in a charge be covered to the term 'benefit'.

Also why has the decision been taken that the data sharing gateway power be used to benefit the whole community? It may be that different degrees of benefit could be awarded to different groups but the whole community derives some 'benefit'. The data sharing may be used to determine which groups 'qualify' for the different rates of 'benefit'.

Q2 Not sure where the latest case law stands on this point as I would have thought you might want to include some organisations like the registered providers (RPs) of social housing, in some data sharing exercises, and they might fall outside this definition. I believe Zac's response has covered this point more fully.

Q3 Yes in relation to bodies such as RPs which now fulfil what was a public authority function. I am not so clear about private companies or charities generally unless they have the proven capacity to properly address issues re security and other key data protection risks.

Q4 As mentioned above I think the need to follow certain requirements e.g making a business case and doing PIAs may mean this power is less used than one would hope. If the legislation is clear the guidance should focus on point a) and also security and onward use of the info shared (although controlling the latter may, in practice, be a difficult issue too with shrinking staff numbers and turnover and often poor records management systems) rather than putting hurdles in the way of actively using the power.

Q5 yes it makes sense to share the info on those in need, with the energy companies involved, so help can be given to relieve fuel poverty in the most efficient way. I know this goes further than anticipated in the guidance but I see it as inevitable if the system is to be efficient.

I am puzzled by paragraph 54 which says that the data sets would not be shared outside the public sector and energy companies would only be advised via eligibility flags. I am sure the Information Commissioner has given advice, however, I would have thought the mere existence of a flag e.g. against my name and address or other identifier would be personal data as it indicates that I am someone who meets the criteria for fuel assistance and that I am therefore 'fuel poor'.

I am not clear, however, how the energy companies will meet the other DPA principles e.g. keeping that info up to date; ensuring its accuracy; the retention period; addressing Subject Access Rights etc especially given that they must also ensure the information is not used for any other purpose.

Q6 Yes, let's make the system as efficient as possible and give people the maximum help they can without stressing too much about whether the information is being reused. No doubt including a term that the information could only be used in ways that would (or would potentially) benefit the household, would be sufficient protection.

Q7 It would be useful if the power should be widely drawn – in terms of the definition of fuel poverty - so that as other forms are identified this gateway can be used to assist.

Q8 Yes this would be helpful but it would also be useful for fraud purposes too

Q9 yes definitely and most members of the public assume this is what already happens. Safeguards are needed but again it would be unfortunate if this process became overly bureaucratic

Q10 I do not believe further protections are needed – see below

Concerning paragraph 72, I hope that the power will be clear enough to facilitate the data sharing needed as the current provisions are not especially helpful where one wanted to do mass data matching in order to identify anomalies and discrepancies e.g. within and across other councils. Yes we do need to protect personal data (and civil liberties) but we also need to stop fraudsters and data matching is a key tool in that task. The balance needs to be more heavily on the side of combatting fraud.

It is concerning to see the amount of bureaucracy envisaged – bearing in mind the cuts to staffing in the public sector - if public authorities wish to use the new power. Really, if a clear framework for using the power is given, public authorities should be then left to use the powers to combat fraud otherwise these powers will not be exercised. There is sufficient protection, already, if public authorities misused the proposed powers and efforts should be directed to making their use easier so that fraud is tackled more effectively.

Q11 3 years sounds about right but if there are signs that it is not being taken up then an earlier review may be helpful.

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Data Sharing Policy Team
Cabinet Office
Floor 6
Aviation House
London
WC2B 6NH

15th March 2016

Better Use of Data - Consultation Paper.

Dear Sir,

I am pleased to outline my response below, as an individual, to the above consultation paper. I have only commented on some of the questions, as indicated below.

Question 3. Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

On balance, no. There is a safeguard in restricting the scope of the power only to public sector bodies. Public sector bodies work under an ethos that involves acting in the interest of the community of the whole. However, private companies etc can have divided loyalties.

Question 8. Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

Yes.

Question 9. Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

Yes.

Question 11. It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the Fraud gateway be operational for before it is reviewed?

Three years seems a reasonable period of time.

Question 14. It is proposed that the power to improve access to information by public authorities for the purpose of better managing debt owed to government will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the debt power be operational for before it is reviewed?

Three years seems a reasonable period of time.

Question 15. Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

Yes.

Question 16. To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Yes, on balance.

Question 18. Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

I am not convinced about the need (outlined in paragraph 117) for the Statistics Authority to be able to compel the disclosure of data by public authorities.

Yours faithfully

Graham M. Phillips



medConfidential
KEEP MY SECRETS

all	
but	
names	

Introduction

The Missing Ethics framework

A better "better use of data"

Individual Level Data is the defining criteria

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Improving access to data to enable better management of debt owed to the public sector

Access to data which must be linked and de-identified using defined processes for research purposes

Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

Research

Statistics

Citizens

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April 2016

Introduction

New "data legislation" is necessary. The illustrative clauses and principles underlying them in this consultation are unfit for purpose.

Irrespective of the choices made after this consultation, every citizen should be able to know how data about them is used, or Parliament has decided a public interest otherwise.

"Making the civil service work for modern Britain"¹ was the title of a post-election speech by the Minister for the Cabinet Office. The details and approach of this consultation suggests that was misheard as making every citizen in modern Britain be required to have their data work for each civil service silo. That is probably not what the Minister intended.

The questions asked in this consultation are systematically and fundamentally flawed. The important issues that should be addressed are treated with a bureaucratic contempt for which Whitehall is infamous.

The civil service needs to demonstrate public transparency on how it uses data. The recording of deaths questions in this consultation are the same figleaf for broad data sharing as in the Coroners and Justice Bill in 2009 - when the Government accepted the problem and withdrew the clause. It therefore is entirely understandable that the data bit of an old Coroner's Bill raises its zombified ugly head again now as the death bit of the forthcoming Digital Economy bill. Reemergence under a different Government strongly suggests that this legislation is not a native Ministerial priority, but is a civil service priority.

The high quality data work of the Cabinet Office seems to be no more. Under past leadership it has been subject to well deserved public praise and resulted in the appointment of a Chief Data Officer. From the details of this consultation, and the process that led to it, the past vision has degraded to the state of a minor project of the Department of Administrative Affairs, while simultaneously lacking any of the leadership qualities that made Sir Humphrey Appleby the idol of the authors² of this consultation...

About medConfidential & AllButNames

medConfidential is an independent non-partisan organisation campaigning for confidentiality and consent in health and social care, which seeks to ensure that every flow of data into, across and out of the NHS and care system is *consensual, safe and transparent*.

AllButNames is a response to toxic data initiatives within the NHS, such as care.data, seeping into the rest of the HM Government. Despite huge public outcry at the misuse and sale of our medical records the Government, under lobbying from vested interests, is trying to do the same thing is always has, just more so. Alternative approaches based on this consultation will be published over the summer.

The Missing Ethics framework

¹ <https://www.gov.uk/government/speeches/making-the-civil-service-work-for-modern-britain>

² We would say the consultation designer, but there is scant evidence that there was one.

As care.data was for the NHS bureaucracy, this consultation is about doing more of what Government been doing already: Not better sharing, just more copying.

If this consultation wasn't about databases, the same questions could be asked about buying more filing cabinets, ink, and scribes.

The approach and consultation strengthens the groupthink of the last decade, where parts of this legislation originate. It may look as if there were no lessons from recent years, but there is a reason this consultation looks that way: the hard lessons have been entirely ignored.

"These legislative proposals are part of a broader programme to modernise the UK data landscape. Our goal is to transform and improve the relationship between the citizen and the state"³ says the Ministerial introduction to the consultation, however, it looks a lot like doing more of the same. This is the approach that led to the care.data fiasco.

The published "data science ethics" framework could have been used to justify care.data, in any of its disastrous forms. No one involved in that programme in 2013 would have had any problem ticking the current boxes.

The original draft framework⁴ was much more challenging. Even when it had been turned into the same 10 point civil service language before the election, the challenge to the status quo remained. The language is now exceptionally bland and unchallenging. It is not about doing better, it is now about doing more.

When the post-election Director of Data took an ethical framework round the Departments, they hated it, and so it was watered down... "Start with clear user need and public benefit"

What the Departments wanted was to keep doing what they'd been doing all along. And so the Cabinet Office destroyed a credible ethical framework and became lap dogs to mass copying of bulk personal datasets... "*Use data and tools which have the minimum intrusion necessary*"

It isn't quite the same process that created care.data, but the outcomes will be the same... "*Be alert to public perceptions*"

The NHS has had 3 years of data pain as those who use data repeatedly fought to keep doing the same thing they've always done, or more of it. The Caldicott Review will say how that should change. A review whose publication has been delayed by Whitehall until the day before the Cabinet Office consultation closes – published before so they can say it was published before, but only hours before the closing deadline so it can't be digested... "*Be as open as possible*"

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final_3_.pdf

⁴ <http://blog.memespring.co.uk/2015/11/12/10-rules/>

As such, when we have read the Caldicott Review, we will publish a commentary in the context of this consultation at <https://www.medconfidential.org/news>

The Government response to this consultation should be simple:

- **“No, to secret or invasive copying of identifiers”.**
- Yes, to offering a citizen a choice whether their data can be copied, or shared, to make a transaction easier for them;
- Yes, to democratic decisions about defining exactly the circumstances when the above question isn't asked;
- Yes, to every citizen knowing how individual level data about them is used, and why.

A better “better use of data”

The Home Office part of the consultation creates arbitrary gateways, for the civil service, not for the citizen. The illustrative language is drafted as data copying done to the citizen, not for the citizen, and is not about the Home Office – they wrote the example, but the legislation came straight off the Cabinet Office shelf.

Local authorities see benefits to sharing medical data with landlords; and why wouldn't a local authority want to tell their department that deals with social housing to know what benefits a citizen is entitled to?

There are also many reasons a citizen may not want their landlord to know a fact that could be legitimately shared for others. This problem can not be addressed at a national scale. It can only be addressed by the citizen being able to give or withhold permission as part of each transaction. Insurance companies will take any data you offer them, which is why the GP profession uses a standard agreed form with just the information needed.

The same thought process needs to be applied to the rest of Government.

Individual Level Data is the defining criteria

Parents want better statistics on local schools, but giving parents access to the detailed school histories of 20 million children, including all their offspring's classmates, is likely unwise.

Even if the names and identifiers have been entirely removed from a dataset on your school days, you can still remember your classmates by name, and can reidentify them just on your knowledge, however long you have been out of school. We discuss later in this document Annex 7 of the first Caldicott Report, which is the list of criteria that make health data identifiable, even if the "direct" identifiers are seemingly removed.

Data on citizens is either aggregated statistics, or it is individual level data. Claims that data "without names" is somehow safe are fundamentally flawed, and a bureaucratic truism that led to the care.data fiasco.

When it comes to individual level data, much as it widely accepted when creating formal statistics, the creation process matters.

If the ethical framework and process are strong, project details matter less. If the ethical framework or process are weak, the project details don't matter at all.

"Digital services so good people choose to use them"

There are undoubted benefits for an individual and for government in data from one department being visible by another, it must only be done with the citizen's individual consent. If the Cabinet Office is now arguing that choice is not a necessity for improving public services, that is a discussion that will have wider ramifications.

Digital services should be so good that people choose to use them, not so creepy it doesn't matter whether citizens use them.

Legislation may be needed to create a gateway, but it must be up to the citizen whether they choose to walk through it, or choose to go a longer way round. The requirements for use of a service should be the same ("prove you were born"), but whether it is an API or a birth certificate should be the citizen's choice.

We understand that HMPO will only provide confirmations electronically if they have a statutory gateway to do so; we see no reason for that particular narrow gateway not to be possible, if it may only be used with the consent of an individual citizen.

Lessons from the Department of Health

Some citizens would be entirely happy with all their data being used; some, otherwise. But it is impossible for the central government data team in the Cabinet Office to tell the difference – they never deal with citizens in the course of those transactions. It is entirely possible to be well meaning, good intentioned, and utterly destructive.

There needs to be a good ethical framework, not one that is designed to be the lowest common denominator, acceptable to all projects that evolved without one. As the forthcoming Caldicott Review will show, some of the existing data projects have not met the standards that should be expected.

The Cabinet Office has lowered the standards and ignored the broken projects. The NHS tried the Cabinet Office approach at the start, which is why care.data is in its third year of suspension. It's not that they don't know how to fix it, it's that the people who can prevent it being fixed like the current setup more than anything that is publicly acceptable. That is what the current independent Caldicott Review is needed to design a system those whose job it was refused to consider.

The settlement that is being developed for medical records has a strong ethical framework underpinning it, which is widely known and absolutely concretely accepted: medical ethics.

Attempting any form of bulk personal dataset copying without a strong ethical framework is doomed to fail.

What is identifiable data?

The definition of what constitutes “identifiable” data in the health arena was clearly defined in 1997, in Appendix 7 of the first of the Caldicott Reports.⁵ It is entirely clear:

“The Working Groups identified a number of items by which a person’s identity may be established. These include:-

- Surname
- Forename
- Initials
- Address
- Postcode
- Date of Birth
- Other Dates (i.e death, diagnosis)
- Sex
- NHS Number
- N.I. Number
- Local Identifier (i.e. hospital or GP Practice Number)
- Ethnic Group
- Soundex Code
- Occupation

The groups determined that an individual item from this list, taken with another item from a particular flow, may in certain circumstances enable identify to be inferred, e.g.:

- Age linked to a diagnosis;
- Postcode and the medicine prescribed;
- Address and the item of service provided”

While not all of those specific criteria will apply to other parts of Government, the fundamental and underlying ideas do. The work of Professor Sweeney, Professor of Government and Technology in Residence at Harvard University and Director of the Data Privacy Lab at Harvard, is the canonical practical example here.⁶ It would be deeply unwise for the rest of Government to ignore the lessons learnt so painfully regarding the identifiability of health data.

⁵ http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4068404.pdf

⁶ Sweeney L. Only You, Your Doctor, and Many Others May Know. *Technology Science*. 2015092903. September 29, 2015. <http://techscience.org/a/2015092903>

Bulk Personal Datasets in the non-secret parts of Government

There are reasons for bulk personal dataset use powers, sometimes with opt-outs, sometimes not; but they must all be based in statute and subject to a discussion and vote in Parliament. Where opt-outs are unavailable or chosen to be overridden, that should only be by the express will of Parliament.

Some aspects of research are only possible at large scales, and whatever the reason, citizens should know how their data is used, and the results of those researches.

Civil Servants should serve the citizenry. It is data about a citizen, which is deeply personal, in a similar way to it being "taxpayers' money".

The Cabinet Office data legislation needs to reflect that.

The coverage of this legislation should be all individual level data - which it appears not to be. We note with deep concern a FOI response⁷ from the Department of Health about their bulk personal datasets. That list is surprisingly short - is that really all they use?

It would be perverse for Government to argue that only individual level data with names attached is data of interest to citizens. That was the argument suggested by former Cabinet Office Data supremo Tim Kelsey when he was subsequently designing care.data, and is no more likely to gain public acceptance in central government than it did in the NHS.

There was at least some form of expectation that NHS uses would have some connection to "the promotion of health", even if there is no agreement of what that means in practice. We do not expect that DWP will be given the same benefit of the doubt.

It is a perverse effect of the lack of understanding of data, that a dataset without names on can include the most intrusive data on citizens, yet be treated more carelessly than an email containing a lunch menu. The classification of individual level datasets at rest in the non-secret parts of Government should be reviewed and enhanced.

The increasing use of data in Government is important, but it is necessary that it be consensual, safe and transparent. Citizens should know how data about them is used, all uses should be done safely, and either a citizen or Parliament should give informed consent to that that usage.

Anything else will lead to care.data style debacles in many departments. That is unlikely to be the intent of this consultation, although it may well be the outcome.

⁷ <http://whatdotheyknow.com/request/320194/response/791962/attach/2/FOI%201022297%20reply.pdf>

Consultation questions

Given the structural flaws in this consultation, we respond to the sections rather than limiting ourselves to the specific narrow and often irrelevant questions.

Improving Public Service Delivery

As we cover in greater detail above, it is more important that citizens know every way that data about them has been used, and have a choice over that topic, than it is who uses it.

Every organisation that delivers public services should expect that the citizens whose data they use, will know when it was used, and why.⁸ Whether that organisation is public sector or private sector, in some ways, matters less.

There are obvious cases where who the user is matters more for particular areas.

In particular, since the consultation attempts to use the "Troubled Families Programme" as a justification, it is clear to note that families in the Troubled Families Programme are there with some form of consent.

There there should be a gateway for projects like the Troubled Families Programme is not controversial; however, every family, and every individual, whose data is used should only be used with consent.

As a voluntary programme, it would be inconsistent and bureaucratically perverse for a family or parent to be able to reject help (as it's voluntary), but for those same families to have no choice on how data on that family was copied by the programme. The Programme is transparent to families about what help is provided, that transparency is entirely undermined if departments can copy data in secret.

While Ministers may advocate for "government using data like the private sector does", that argument is fundamentally flawed. Those arguments have oft been addressed in part, and we do not propose to repeat them there, with the exception of querying whether Ministers and the creators of this consultation have spoken to, for example, the mobile phone operators, in detail about how they use data, and the proposals covered here. In conversations, the disregard for functional and meaningful safeguards in these proposals is deeply concerning. While departments sling data around whitehall like paper aeroplanes, the telcos ensure that, while they may use data in innovative ways, there are very very strong accountability and internal controls on what happens - because of the reaction. Those internal controls do not exist within Whitehall, where the driver can be political.

⁸ <https://medconfidential.org/2014/what-is-a-data-usage-report/>

Providing assistance to citizens living in fuel poverty

We limit our comments to *how* assistance should be facilitated. Whether assistance should be provided to particular groups is not an issue on which we take a view, and would like all views, even if contradictory, to be heard and balanced on question 5.

There will be views where the interests are contradictory - and where only the citizen can know which way they will choose to go, and that may be subtly different. The systems in place for data decisions involving individual level data must facilitate that.

The process currently followed, for the DECC Winter Fuel Payments, seems to be a privacy by design process that shares the minimal information, while minimising the costs to all involved, without any possibility of harm or distress to individuals given the nature of the data that is shared. Expanding that process does not, on the face of it, seem controversial or problematic, but the devil is in the details. We are happy to look further should they be provided.

Access to civil registration to improve public service delivery

We will answer the two, very narrow, questions posed, and then discuss the illustrative clauses which are far broader than the figleaf covered by the consultation questions on a single substantive issue.

The sharing of data is currently a substantially political decision, rather than a decision about citizens. Jeremy Hunt's database of women's genitalia, designed by the Home Office⁹ which had "prosecutions" as a justification for certain data items; DWP wanting every fit-note form filled out¹⁰ to measure GPs, or grab GP appointment books¹¹ which got walked back after a firestorm.

Those who wish data will always justify it as "necessary and proportionate". Without strong Departments, "necessary and proportionate" will become whatever is politically expedient, as it has in the past. We will publish further on this as part of our response to the Caldicott review.

8. Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

⁹ <http://www.hscic.gov.uk/fgm> - see spreadsheet.

¹⁰ <https://www.gov.uk/government/publications/fit-notes-plans-for-collecting-anonymous-data-in-england>

¹¹ <http://www.dailymail.co.uk/news/article-3168803/Privacy-storm-GP-visits-No10-demands-details-millions-confidential-appointments.html>

As part of digital public service delivery, a citizen should be able to consent to a digital check being made for a particular purpose, in line with the same evidence being provided via other non-digital means (such as a paper birth certificate).

We understand that the Home Office, in particular the HM Passport Office, wish a particular, well defined, narrow legislative gateway to answer citizen consented electronic requests from other parts of Government.

That is not what the illustrative clauses discuss now, with the illustrative clauses being similar to the flawed s152 of the Coroners and Justice Bill 2009.

9. Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

In line with the level of quality and attention to detail of much of this consultation, the case for this has not been made. That is not to say that it would not be made.

We support the work of the Royal Statistical Society in their work for the timely registration of deaths and the production of statistics.¹² This whole area of government handling is flawed due to the secondary interest of the Registrar General's work in the Home Office, where their primary job is that of Director General of the Passport Office.

We would support a machinery of Government change to move the registration of such life events either back to ONS, or to the HSCIC.

That is not what was proposed in the Coroners and Justice Bill in 2009, and it is not what the illustrative clauses discuss now. It is entirely understandable that the data bit of Coroner's Bill raises its zombified ugly head again now.

This reemergence strongly suggests that this legislation is not a Ministerial priority but is a civil service priority, and the civil service needs to demonstrate public transparency.

¹²

<http://www.rss.org.uk/Images/PDF/influencing-change/RSS-statement-late-registration-deaths-England-Wales.pdf>

Combating fraud against the public sector through faster and simpler access to data

It has been a repeated mantra of successive Governments that increased data sharing can combat fraud. Throughout the open policy making process, there was repeated mention of past attempts to prevent fraud through data sharing and a desire to do more, and no substantive evidence provided that any of it had made any difference at all.

While data sharing programmes may provide some assistance, there should be a new framework designed accounting for their cost, their benefit, and the outcomes. That is likely to involve the Parliamentary scrutiny process of programmes, rather than internal data sharing metrics that the public never see.

Combatting fraud should be subject to safe and transparent reporting, and also subject to the democratic consent of Parliament, both in practice as well as in principle. In that framing, it is possible to consider error in the same context, looking at mechanisms to reduce institutional and individual error as part of the same process.

While piloting and testing programmes is important, given the past litany of failed programmes in this area that are limping along, there should be an expectation that each programme ends unless it is shown to meet or exceed predefined criteria, and that it continues to do so.

Improving access to data to enable better management of debt owed to the public sector

Whatever practice is developed, it should be the case that this offer is better to the citizen than the existing status quo of dealing with debt independently.

As such, each citizen who is in debt with Government should be able to choose to be part of this programme if they wish, for the aspects of their debt that they wish.

If a citizen wishes Government to merge the debts and act as a single creditor, then Government should be capable of doing so, but where the citizen does not explicitly wish that to happen, then the status quo should continue.

At a future point, the "default" choice may change, but Government has clearly not demonstrated that this new approach is better. Should it do so, to the satisfaction of the organisations that work with vulnerable individuals in these circumstances, an opt out model may be considered, if felt beneficial by those organisations.

For any legislation on this topic, there will have to be a statutory bar to privatisation, with any consent for a public body doing debt management being reconcentrated for a private organisation.

Similarly, should any part of this be outsourced, there must be clear statutory bars on the data from Government being reused for other purposes.

Access to data which must be linked and de-identified using defined processes for research purposes

It is unfortunate that the attempt to define trust third party matching in primary legislation is not the most flawed part of this consultation. Defining such a technical process in primary legislation is fundamentally and entirely unwise.

The legislation should define the outcome, and the requirements, and the restrictions, but should not define the mechanisms for matching. It should also require that any data for research purposes must be subject to a dissent mechanism (ie, opt-out; or be an opt-in process - as with surveys), and a full reporting mechanism to citizens of what research has been approved, and the new knowledge that came from their participation.

Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

There should be a separation between statistics and research. Official (or National) Statistics require a population dataset, which can not be consented.

For a worked example in the health arena, please see the existing medConfidential publications¹³ on this topic, which looks at risk stratification for A&E, which is said to be the most complex area and previously argued as the reason that individual level data was absolutely required. It isn't.

Research

Modelling and the discussion around the design of statistics are both actions and features of Research (which also use other Official/National Statistics to inform the population pyramids of non-response or dissent).

¹³ <https://medconfidential.org/2015/towards-protecting-data-in-secondary-uses/>

It is in this way, that research done by the UK Statistics Authority is little different in data access to that done by academic researchers, or others. There is no expectation of "privileged" access that some researchers get and others can not - other than the differentiation of organisation, purpose, and capabilities that vary between institutions and process already.

All research projects should be published in advance,¹⁴ and all publications which generate new knowledge should be available to the public.

Statistics

Any statistics produced (whether official, national, or experimental) are then created off the minimal dataset that is required for their production, as evidenced by the research process.

All statistics should be published.

Citizens

For individual level data, whether identified or de-identified data, citizens should know how data about them was used, and the outcomes of the research that came from the use of their data.

ONS has historically attempted to ensure all researchers reported back on their publications and "impact" to ONS or intermediate data providers (who passed that information on). It has previously been an important measure for understanding how non-ONS researchers use data, and a strong justification for some data products continuing to exist.

Given the large strides that the ONS website has made in recent months, and the renewed focus on accountability, it is necessary for UKSA to begin to think about how it can report back to citizens on the knowledge that is generated based on statistical knowledge.

MedConfidential



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¹⁴ Following the model of <http://opentrials.net>

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Would you like us to treat your response as confidential?*

If you answer yes, we will not include your details in any list of people or organisations that responded to the consultation.

Yes No

Is this a personal response or an official response on behalf of your organisation?

Personal response

Official response

If you ticked "Official response", please respond accordingly:

Type of responding organisation*

Business

Charity

Local authority

Central government

Wider public sector (e.g. health bodies, schools and emergency services)

University or other higher education institution

Other representative or interest group (please answer the question below)

Type of representative group or interest group

- Union
- Employer or business representative group
- Subject association or learned society
- Equality organisation or group
- School, college or teacher representative group
- Other (please state below)

Community Interest Company

Nation*

- England
- Wales
- Northern Ireland
- Scotland
- Other EU country: _____
- Non-EU country: _____

How did you find out about this consultation?

- Gov.uk website
- Internet search
- Other

May we contact you for further information?

- Yes No

Introduction

Mydex CIC is pleased to respond to this consultation, and welcome the diverse consultations across Government on various issues regarding personal data. We have gladly taken part in a number of these, which are listed below.

The current proposal would allow for easier sharing of data between government departments but — after this initial sharing process — occur completely with the involvement of the citizen whom the data is about. This intimates the notion of removing the need for consent and relying simply on the idea that citizens can trust Government and its processes to avoid misuse.

We felt that there were some core concepts that were absent in this proposed legislation, and we have listed them below:

- **Transparency and auditability for the individual** — The ability to get a record of permissions / consent (preferences) a citizen has set that is theirs to keep and review at any time. The ability to get a report showing who has had access to their data, for what purpose, in a format that can be interrogated (see data usage report concept attached). This does not necessarily have to be the actual data itself, just information on which entity inside and outside of government, which systems, which individuals, for what purpose.
- **Controls** — The individual should be able to change and update these preferences on sharing in future, and set both broad consent terms and more granular consent in particular cases (as they can with Government as a Platform notification preferences that can be done at a granular level).
- **Simple access** — The notion of a transparency / consent dashboard where preferences could be controlled would make total sense, as well as the idea of being able to have a certified local copy under the individual's own control for audit and evidence purposes
- **Certified copies of actions and data** — the individual should be entitled to a copy of data generated about them as result of assistance or their usage that they can then take elsewhere to feed into other organisations who may provide them assistance based on the data as opposed to sharing process locked in to govt and its chosen providers. They should be able to get a digital time stamped receipt of submission of an application or form and a summary of the data provided and the use that will be made of it, and any planned or implied secondary use.
- **The principle of data minimisation** — This needs to be observed in cases where a binary token of confirmation would suffice (i.e. 'yes born in UK' or 'yes under certain age' or 'yes entitled to X benefit').
- **Time bound** — Any extensions to rights and powers for data sharing outside of government or to wider public sector should be transparently proposed and audited prior to extensions being granted. There should be sunset clauses in this legislation.
- **Saying you can trust us is not enough** — It is simply not sufficient for Government to say "trust us we have processes, we have controls, we train people". There must be independent oversight and transparency and accountability and audit.
- **We need proper principles at the core** — The privacy principles set up within GOV.UK Verify were a good starting point for how privacy would work generally on data. They should be embraced as part of this legislation as should the concept of data usage reports in machine readable format to a defined standard across government along with the movement of subject matter access requests to support a

machine readable output format based on a defined standard. Both should be available via APIs to individuals equipped with apps and trusted third-party services.

- **Missing an opportunity for transformation of society** — The government is in a unique position to provide leadership and guidance about the empowerment of citizens to better manage their own life, the data surrounding it and become adept at sharing data and managing the risks of how their data is used. They need to become informed about personal data, its use and its risk in the same way as funding has been provided for campaigns to improve cybersecurity awareness about threats to personal data, identity and other sensitive information. There is nothing in the legislative proposal to genuinely make citizens digitally enabled, or able to act independently, from which self reliance and innovation will come, as well as a more secure, more trustworthy society of self-sovereign individuals.

This organisation-centric view has long been a barrier to a truly digital society. We have seen many examples of this issue across public, private and third sector services. Some examples are:

- **SMART Meter policy** — prevents individuals from collecting their own consumption data directly without a trusted third party. They have with no remedy beyond an annual report of who accessed their data claiming they had consent to do so. A government policy and programme.
- **Midata programme** — designed to improve consumer choice and portability across private sector service providers excluded public services from its scope. It once again favoured control of personal data by trusted intermediaries, even though the Data Protection Act offered personal use exemption for individuals and viable means of person collection.
- **DCMS Age Verification** — initiative and legislation designed to protect vulnerable people from accessing age related content prevents an individual from collecting a proof of age token that they can present anywhere, any time. Instead, it favours dependency on a central register or risk-based model which exposes an individual to a privacy bleed about their behaviours.
- **Gambling Commission proposed approach to create an online national self exclusion** or register of those with gambling addiction. It creates yet another privacy bleed and threat vector for vulnerable people.
- **Identity programmes that do not recognise the simple fact that identity is the by-product of verified attributes about an individual.** Government already holds the majority of these and could easily share them in a verified form with citizens using existing channels. This would dramatically improve the speed of achieving identity assurance and streamline the process of going through GOV.UK Verify for the UK population.

- GOV.UK Verify recognises the value of verified evidence about individuals across three broad categories, namely citizen (attributes issued by a public body, government), money (attributes relating to defined activities within the financial services sector) and living (evidence of life and real world engagement with third parties across any sector including government). Enabling citizens to access certified copies of this information seamlessly and easily, as well as manage consent for third parties to use as part of identity verification and identity assurance activities would be transformative.
- **Government, public sector, private and third sector transactions with citizens could be greatly streamlined in terms of experience and efficiency. This would be possible if the individual were able to collect once, and receive realtime updates to, verified attributes about themselves and their interactions with Government.** They would then be able to share these same attributes many times in many different configurations seamlessly.
 - This would thereby reduce their own effort in form filling and finding information, and that of the relying party or service provider in verifying the information all over again, as it would arrive signed and verified.
 - No liability or risk profile changes, just more efficiency — infinitely flexible and scalable to a future yet unknown. It would reduce the risk and threat of data breach in government by distributing the data to individuals for onward use. It would provide an effective barrier to misuses of so-called trusted third parties or intermediaries.
 - All data sharing would be implemented under broad policies under the individual's control with full transparency.
 - There would be a dramatic reduction in capacity demand for Government as a Platform and reduction in the number of transactions and actors interacting at scale with GaaS.

Mydex has contributed to the following consultations, evidence and research undertaken in the last 12 months.

- midata programme
- DWP Universal Credit
- Cabinet Office Data sharing
- HMT Bank API Consultation
- OIX — UK Private Sector Requirements for Internet and Identity Services
- Parliament Science and Technology Committee — Big Data Dilemma inquiry
- Cabinet Office & Ed Vaizey MP — UK's Digital Revolution
- Online Platforms and the EU Digital Single Market
 - Video footage of Mydex CIC oral evidence session at House of Lords
- ICO — Privacy, transparency and control

Consultation response

Improving public service delivery

1. Are there any objectives that you believe should be included in this power that would not meet these criteria?

We feel it is essential that the use of the data is transparent to the citizen, and that they are able to express preferences about and secondary use of this information, similar to the way they can express preferences as to the granularity of email notifications on some online Government portals.

2. Are there any public authorities that you consider would not fit under this definition?

In the same way as GOV.UK Verify contractually prevents certified companies from making use of any personal information it collects or processes as part of undertaking the identity assurance process for citizens wishing to gain online access to public services any non public service body, providing services to citizens on behalf of a public authority should be legally and contractually prevented from making any secondary use of the personal data about the citizens they serve or process. There should be no offer of commercialisation rights to the use of any personal data about citizens.

All such providers, regardless of sector, should be required to provide auditable records of all use of personal data in the form of a data usage report directly to the citizen in digital, machine-readable format upon request so that they may undertake their own checks and ensure transparency at all times about how and where their data is being used.

3. Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

No, we believe that citizens must be able to give specific consent to the use of their data, and have the ability to audit the data usage, including the ability to receive a certified data usage report. Regardless of whether or not such organisations are included, there should be a 'no secondary use' clause that stipulates the data only be used in pursuit of service, and that there is no downstream disadvantage to the citizen.

4. Are these the correct principles that should be set out in the Code of Practice for this power?

Many are appropriate but there are some that are missing. We mention some of these above, but they include:

- Transparency and auditability of data usage for citizens to enable accountability for data misuse.
 - This would include citizens automatically being given a certified data

usage report for all of their data used in various contexts that is theirs to keep.

- The ability for citizens to change, update and revoke consent in a preference-type model, as opposed to consenting once to the use of their data and losing all control thereafter.

Providing assistance to citizens living in fuel poverty

5. Should the Government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

Again, we believe this can only be done with the active consent of the individual, and would indeed be done better *via* the individual. They could be equipped with a digital token of entitlement that can be automatically updated with necessary information, which they can present when and wherever they need to do so. In this way, the individual and citizen gains the choice of using this data where they wish with the organisation they choose. This would also greatly improve efficiency when one individual was required to share data with different Government departments.

6. Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

In this case, the citizen would be better served in a market economy, where information about their entitlement to specific services was given back to them, allowing them to feed this information into advice services provided by commercial or third sector organisations.

7. Are there other forms of fuel poverty assistance for citizens that should be considered for inclusion in the proposed power?

There are regional variations in Scotland that are not considered here such as those proposed in the [Smith Agreement](#), and the legislation should be open to taking on new forms of assistance as and when they become available. These should be consent-based and transparent when applied.

Access to civil registration to improve public service delivery

8. Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

The Data Protection Act should govern any such decision, which is one of data minimisation. Any sharing should be undertaken with the consent of the citizen or parent, and should only include what is necessary in order to complete the process in question. This could mean, for example, instead of date of birth, a confirmation that the individual is over or under a certain age; instead of place of birth, a confirmation that they were born in the UK, and so forth.

9. Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public

authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

We believe that the Government as a Platform approach of having central registers would be a valuable asset to public service. It should also be possible for the individual to accumulate records from said registers themselves, and be able to delegate authority of these registers to executors of estate and / or family members.

Combating fraud against the public sector through faster and simpler access to data

10. Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

We believe taking a person centred approach to enabling citizens to participate in combating fraud would further improve the approach outlined. Giving the the ability to join whitelisting of information so that valid citizens and information could be excluded from investigations thereby reducing the field of analysis would enhance outcomes through better triangulation of potential suspect identities and claimants. Equipping individuals to report on and express concerns would also provide an early warning system.

11. It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the Fraud gateway be operational for before it is reviewed?

We think a six-month, data-driven cycle, informed by metrics e.g. number of frauds prevented or identified and investigated, along with monitoring for inappropriate use. A three year period would be too costly and unnecessarily long.

Improving access to data to enable better management of debt owed to the public sector

12. Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?

We strongly recommend working with debt charities and the Money Advice Service. We also believe that enabling individuals to have a transparent, integrated view of their total debt, under their own control, would be of great value. This would allow apps and services to work with this data to provide advice and support, and have hugely increased value over simply sharing information between organisations from within Government. This is because, in reality, individuals may be in possession of information not captured elsewhere and with no easy means of expressing it either due to embarrassment or lack of tools to do so. The only person truly capable of creating a 360 degree view of a person's life and circumstances is the individual themselves. Government assisting them to do so with the help of trust third parties charged with providing unbiased support and no commercial agenda creates and

environment of trust that can be leveraged to overcome systemic behavioural issues.

13. How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

We strongly recommend following the approach taken by Government Digital Service which is one of discovery, alpha and beta projects. The additional scope in discovery is allowing a team to consider solutions and approaches not currently expressed as users needs. To overcome significant challenges of a systemic nature requires innovation and exploration of theories of change that may not be self-evident to the user. Many of the projects are operated under the OIX UK umbrella which has a strong governance model.

If this could be extended to deliver social impact and public service outcomes, and maintain the confidentiality of personal data, it would be a useful vehicle to control funding and engagement. Independent oversight is a fundamental requirement, and this means that participants should subject to audit of contribution and motivation.

Active involvement of real people with real data in such projects is strongly advised, equipping them with the means and tools to do so is essential, especially around reducing effort for data sharing, consent management and making informed choices about how and when data is used.

14. It is proposed that the power to improve access to information by public authorities for the purpose of better managing debt owed to government will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the debt power be operational for before it is reviewed?

See answer to Q11. We think a six-month, data-driven cycle, informed by metrics e.g. amount of debt deficit reduced or identified, along with monitoring for inappropriate use. A three year period would be too costly and unnecessarily long.

Access to data which must be linked and de-identified using defined processes for research purposes

15. Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

We believe that the decision to share data for research purposes should rest with the individual. If the individual expresses a preference that they want to use their data to support research, they should be in a position to collect and share this data on their terms in a person-centred approach.

16. To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Yes they should, but see previous comments about consent for the sharing of data. The ability to set broad preferences as well as granular detail would be beneficial in this case.

17. What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

We do not believe it is up to a single authority to do this. It is about crowd-sourcing information from all quarters and allowing individuals to express their intentions and desires for information to be included in such work.

Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

18. Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

There is a lack of clarity in this question so we have answered in two different contexts

A. Two years notice in advance about intention to share personal data with the UK Statistics Authority

We believe that this is an acceptable advance notice. However, we would also suggest that a shorter timescale would be possible if Public Authorities took a person centred-approach to engagement with the population and allowed them to have a consent dashboard where they could express in broad terms what they are comfortable sharing in terms of personal data and specific use cases, as well as where and when they would need to be directly asked for explicit consent. This would enable a more dynamic approach to statistical analysis and planning and also allow for ad hoc requests to support policy development unforeseen two years before. Such an approach would also allow for a rolling census model to be implemented, thereby reducing the cost to the public purse of this ten-year cycle of activity and bring the census into the digital age. We have developed a working model for this approach.

B. Two year period of entitlement to share personal data with the UK Statistics Authority

This would seem appropriate period of review but consideration should also be given to the right of the citizen to remove themselves from statistical information if they object on a range of parameters e.g, privacy, ethical and moral grounds. Consideration for a qualitative and quantitative review of the benefits of any form of statistical reporting both in terms of its ongoing use, its cost to produce and the benefits derived from its existence.

19. If your business has provided a survey return to the ONS in the past we would welcome your views on:

- a. the administration burden experienced and the costs incurred in completing the survey, and

The notion of review last return and update would be a most welcome function, anything that reduces the effort, physically, cognitively and emotionally is most welcome. Respect for individuals and organisations time and resources should always be a factor in designing any such return. If a means of automating the compilation could be achieved via API's to create automatic data sharing and upload from other sources would be a sensible approach if permission and transparency of use were clearly expressed.

b. ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics.

The notion of review last return and update would be a most welcome function, anything that reduces the effort, physically, cognitively and emotionally is most welcome. Respect for individuals and organisations time and resources should always be a factor in designing any such return. If a means of automating the compilation could be achieved via APIs to create automatic data sharing and upload from other sources would be a sensible approach if permission and transparency of use were clearly expressed.

20. What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to processes that collect, store, organise or retrieve data?

We consider the following principles to be crucial to the preparation of such a Code:

- Defined purpose - explicit use case defined, no ambiguity, no secondary use
- Expected Value - a defined measure of success from its collection which can be measured
- Privacy Impact Assessment - the potential risks to privacy and any unintended consequences from production of such information, including reversing any anonymization risks
- Effort for collection for the representative cohorts of individuals involved
- Avoid duplication - determine if such information is already being collected or processed for different purpose
- Create a register of all statistical information being collected including summary of datasets, purpose, evidence of value, objectives and privacy impact assessment and clarity about SRO
- Evidence of consultation and objections and issues raised prior to implementation
- Clarity about route to secure evidence of usage made of report
- Route to making formal complaint or enquiries about the consequences of the production of this report

Responding to the consultation

Your details

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity.

We will publish our evaluation of responses. Please note that we may publish all or part of your response unless you tell us (in your answer to the confidentiality question) that you want us to treat your response as confidential. If you tell us you wish your response to be treated as confidential, we will not include your details in any published list of respondents, although we may quote from your response anonymously.

Name (optional): Steve Lloyd

Position (optional): Libraries, Museums, Culture and Registration Services Manager

Organisation name: Lancashire County Council

Address: County Hall, Preston, Lancashire.

[REDACTED]

Telephone [REDACTED]

Would you like us to treat your response as confidential?*

If you answer yes, we will not include your details in any list of people or organisations that responded to the consultation.

Yes No

Is this a personal response or an official response on behalf of your organisation?

Personal response

Official response

If you ticked "Official response", please respond accordingly:

Type of responding organisation*

Business

Charity

Local authority

Central government

Wider public sector (e.g. health bodies, schools and emergency services)

University or other higher education institution

Other representative or interest group (please answer the question below)

Type of representative group or interest group

Union

Employer or business representative group

Subject association or learned society

Equality organisation or group

School, college or teacher representative group

Other (please state below)

Nation*

England

Wales

Northern Ireland

Scotland

Other EU country: _____

Non-EU country: _____

How did you find out about this consultation?

Gov.uk website

Internet search

Other

May we contact you for further information?

Yes No

Questions

Improving public service delivery

Question one: Are there any objectives that you believe should be included in this power that would not meet these criteria?

No

Yes

If yes, please explain your reasons.

As long as improving public service delivery is interpreted in a wide ranging way – bringing efficiencies for public sector organisations therefore reducing cost and therefore enabling services to be able to continue to be delivered. Combatting fraud is also important but again this should be regarded as part of improving public service delivery.....

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Question two: Are there any public authorities that you consider would not fit under this definition?

No

Yes

If yes, please explain your reasons:

.....

.....

.....

Question three: Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your reasons:

.....
.....
.....

Question four: Are these the correct principles that should be set out in the Code of Practice for this power?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your reasons:

.....
.....
.....

Providing assistance to citizens living in fuel poverty

Question five: Should the government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your reasons:

.....
.....
.....

Question six: Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your reasons:

.....
.....
.....

Question seven: Are there other forms of fuel poverty assistance that should be considered for inclusion in the proposed power?

Yes

No

If yes, please explain your reasons:

...Not my sphere of responsibility.....
.....
.....

.....

Access to civil registration information to improve public service delivery

Question eight: Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

Secondary legislation should set out the detail of which departments can access information, what information and how. The detail of data sharing does need to be set out in secondary legislation so that there is a balance of enabling and improving the current sub optimal position but at the same time proving necessary and appropriate assurance.

.....

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Question nine: Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to a deceased person)?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

...A robust and clear framework and process needs to be set out in secondary legislation. It needs to be clear why information is being shared and to have good reason.

.....
.....
.....

Combating fraud against the public sector through faster and simpler access to data

Question ten: Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

Yes

No

Please explain your reasons:

.....
.....
.....

Question eleven: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed?

...18-24

months.....

.....
.....
.....

Improving access to data to enable better management of debt owed to the public sector

Question twelve: Which organisations should government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtor who owe multiple debts?

...Not my sphere of responsibility.....
.....
.....

Question thirteen: How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

...A cross public sector steering group including adequate local authority representation should be set up to monitor and provide appropriate governance to the pilots.....
...
.....

Question fourteen: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed??

...18-24 months.....
.....
.....

Access to data which must be linked and de-identified using defined processes for research purposes

Question fifteen: Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

Yes

No

...Should be set on a full cost recovery basis – making sure that it is full cost recovery.....

.....

.....

.....

Question sixteen: To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Yes No

This would give transparency.....

.....

.....

.....

Question seventeen: What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

.A framework should be drawn up setting out the strategies that research could support and giving illustrative outcomes – e.g. health prevention agenda, economic generation, learning, improvement of environment and where the citizen lives. The framework could be sense checked against a selection of local authority strategies and key aims and also the same for a selection of central government departments.....

.....

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Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

Question eighteen: Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

Yes

No

.....
.....
.....

Question nineteen: If your business has provided a survey return to the ONS in the past we would welcome your views on:

a) the administration burden experienced and the costs incurred in completing the survey

..N/A.....
.....

b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics

N/A.....
.....

Question twenty: What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to the processes that collect, store, organise or retrieve data?

...Principles already embedded in the Data Protection Act such as proportionality, strong governance, a reason for collecting storing data.....

.....

.....

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**Cabinet Office: Better use of data in
Government**

Southern Water's Response

20 April 2016

Southern Water's response to the Cabinet Office consultation: Better Use of Data in Government.

Overview

We welcome the opportunity to contribute to these proposals at this stage and believe that allowing data to be used more effectively, while maintaining proper protections, will have benefits for customers and public bodies.

We agree that the new legislation should have the best interests of citizens at its core. It is critical that the public, our customers, have confidence in the way that their personal information is shared, used and protected.

It has long been recognised that the inability to access certain data has made it difficult to target customers efficiently and effectively. We feel that some of the proposals should be expanded to include water companies, especially in relation to ensuring vulnerable customers have access to the assistance and support they need. We are striving to become leaders in meeting the needs of vulnerable customers and our work was cited by Ofwat as an example of best practice within the industry.

The water industry has previously called for greater sharing of data between government and the industry with the specific purpose of providing assistance to our most vulnerable customers. In response to a consultation on data sharing and changes to the Watersure tariff¹, Water UK, on behalf of the water industry, wrote that water companies would "welcome a scheme" that would allow the sharing of data associated with Universal Credit and Pensions Credit. This would improve "the targeting and cost effectiveness of affordability assistance", enable "more expansive assistance schemes" and improve the efficiency of engagement with vulnerable customers who are struggling to pay their bills.

While the focus of the public service objectives must be to deliver benefits or an offer or service to individual citizens and not the wider community, we believe it is important to explain the context of affordability and debt in the water industry. Ofwat estimates that debt owed to water companies adds approximately £21 to each household bill in England and Wales and totalled £2.2 billion in 2014.

The industry recognises that many customers are in debt because they are struggling, not refusing, to pay and has adjusted its approach to working with these customers. By engaging with these customers we can offer them the assistance they need to pay off their arrears in an affordable way, reducing their debt and the shared burden for all customers. In our business plan, we have promised to increase the proportion of customers who take up the support we offer. Having proper access to the right data would help us to achieve this.

In the following, we have responded to the questions that we feel are most relevant to our concerns. We have no comment on the questions that we have not responded to.

¹ [Water UK Response to Defra consultation on data sharing and changes to Watersure](#)

Question 3: Should non-public sector bodies (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the public service delivery provider?

Yes, we believe water companies should be included in the scope of the public service delivery provider. We provide an essential public service and are considered public bodies in a number of other areas. Having better access to data would improve the service we provide in a number of ways.

Question 5: Should the Government share information with non-public sector organisation as proposed for the sole purpose or providing assistance to citizens in fuel poverty or for any other reason?

We believe Government should share information which would assist water companies in identifying those customers who are most likely to be eligible for financial support tariffs or other assistance. For example, being included on our register of customers that may have specific assistance needs and targeted water efficiency messages and products.

We believe the industry-leading work we are doing on affordability constitutes “timely and effective interventions”, mentioned as a purpose of the legislation. We have been working with local authorities, community groups and charities to identify customers who may have difficulty affording their bills and providing information about our support tariffs. This work has been praised by Ofwat as an example of best practice in the industry².

These local relationships have been, and will continue to be, invaluable. Having access to better data would make our work both more efficient and more effective. The “eligibility flags” could be adapted for water companies and would provide the necessary information to help customers, while protecting their personal data.

We maintain a register of customers who have told us they have special needs, such as the elderly or those with medical conditions. This enables us to better target our efforts during an incident, but we know that our picture is not complete. Like Government, we rely on customers telling us about their needs, which can mean we are unable to provide customers with the right assistance when they need it most. By having access to data on Pension Credit, we could automatically add customers to our register, ensuring we can help more customers in a timely and effective manner.

Question 6: Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance living in fuel poverty?

and

Question 7: Are there other forms of fuel poverty assistance for citizens that should be included in the proposed power?

We believe water efficiency information should be provided alongside energy efficiency information, particularly to customers living in fuel poverty. Heating water can account for up to 30 per cent of a household's energy bill.

The Green Alliance estimated that a metered household could save between £45 and £78 per year from water efficiency measures – with between £12 and £20 of this

²Ofwat Affordability and Debt 2014-2015 – page 21

saving resulting from a reduction in energy usage³. We are already taking steps to help our customers save water, energy and money.

Following on from the success of our industry-leading Universal Metering Programme, we have promised to reduce the amount of water consumption by a further 15 litres per person. We will achieve this by providing customers with better information and advice on how to reduce their water usage, along with water efficiency devices such as tap aerators and water efficient showerheads. These savings would be most beneficial for customers whose bills make up a higher percentage of their household income and who could also be experiencing fuel poverty.

Question 9: Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

Yes, and we also think water companies should be included in this.

While we take all available measures to not cause distress to our customers, unfortunately in some instances we send letters addressed to deceased customers, where we have not been advised of bereavement, and this can cause distress to their families. Having access to this information would reduce the chances of this happening.

This could also allow us, where appropriate, to offer financial assistance such as reduced tariffs or writing off parts of customers' bills.

Question 12: Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?

The water industry has worked extensively to define affordability and vulnerability and tailor its approach in dealing with customers based on those definitions. Organisations such as Ofwat, the Consumer Council for Water or Water UK should be consulted by Government to understand how the water industry works with vulnerable debtors.

We believe this could provide an opportunity for better data sharing between utility companies and across sectors. As mentioned above, debt in the water industry adds £21 to each household bill and total debt owed to the water industry reached £2.2 billion in 2014. According to research by uSwitch⁴, consumer debt in the energy sector reached £507 million in 2014. The ability to share data across sectors could encourage greater co-operation and allow a joined-up approach to engaging with vulnerable customers.

³ Green Alliance – [Cutting the cost of Water](#) – page 10

⁴ [uSwitch press release](#)

Consultation on Improved Data Sharing by Central Government April 2016

Comments from Aberdeen City Council

The approach proposed, to permit the sharing of specific data between accredited bodies on a minimal disclosure basis, is to be welcomed. However, we would welcome a broader debate as to whether Central Government should be bolder in pursuing an agenda based on Open Data, except where there are specific issues. Such a framework would lay the foundations for a new approach to sharing data across the public sector.

Additionally, given an increasing private sector involvement in service provision, it is worth considering how effective restricting data sharing by schedule may prove to be. It may be that mechanisms and safeguards can be implemented to ensure the high degree of security that the public sector are maintained in the 3rd and private sectors, but greater clarity is required on how these relationships might be constituted. Rather than focus on breaches and penalties, minimum standards (as suggested by the establishment of Codes of Practice) would seem to be a more coherent approach.

On the 3 areas identified in the proposals:

Improving Public Services

Public Service Delivery (Fuel Poverty) – As the data to be shared will by necessity identify both individuals and sensitive areas this approach seems justified. Some concern might be raised about the individual security risk of certain 3rd party participants, but there is no compulsion to share data.

Civil Registration – This proposal is eminently sensible. However, it is restricted to England and Wales alone. It would seem if the system were to be extended UK wide. (NB Separate Registration in Scotland and England means that someone born in England who dies in Scotland would not have a complete record available under the current proposal in either jurisdiction, as their death would not be visible in England, their birth in Scotland.)

Tackling Fraud and Debt

Given the nature of investigation, it is possible that the Debt and Fraud powers might extend to trawling exercises, however legitimate. Such an interpretation, though, would be subject to testing in court.

Fraud - This proposal for listed bodies to share data to prevent, detect and deter fraud is eminently sensible.

Debt - While this proposal has much to commend it, it should be noted that the creation of the Debtor entity and the creation of a unified plan might present challenges. First, might the centralising nature of this proposal logically be extended to the creation of a single Debt Collection agency? It is then possible that conflict might arise as other authorities 'lose control' over their revenue collection. Equally, the addition of a further bureaucratic layer might mean that the disbursement of funds might be slower than traditional in-house collection.

Data for Research and Official Statistics

De-Identified Data – Given that data will be de-identified, could this be an opportunity for the resulting data sets to be made more widely available? (Possibly, incorporating a premise that data will be made available for general use except where there are specific issues after a set period of time or event.) Such a position would greatly enhance the reputation of the government and encourage alternate interpretations of the data.

Identified Data – Of concern is the proposal that any changes to the originating data systems would need to be in consultation with the UKSA. Given the interconnectivity of many systems it might be difficult to operate under such a regime if taken to its logical conclusion.

We note that the cost of producing these data sets is to be borne by the originating organisation. Although this probably does not present an unreasonable burden, it is possible that organisations could have difficulty achieving the required standards and consistency.

Better Use of Data - Consultation Paper:

Response from Cheshire East Council

Respondent: Cheshire East Council

Contact: Nick Billington, Economic Research & Intelligence Officer, Spatial Planning Team, Cheshire East Council. Email: [REDACTED]

Responses shown in bold below.

Summary of consultation questions

Improving public service delivery

1. Are there any objectives that you believe should be included in this power that would *not meet* these criteria?

We do not wish to comment on this.

2. Are there any public authorities that you consider would not fit under this definition?

We do not wish to comment on this.

3. Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

Yes, as improved data sharing and usage can help to improve their decisions about their provision and targeting of public services, and will ensure that the treatment of all public service providers is consistent. However, it should only be their existing public services functions that are included in the scope of the delivering public services power: they should not, for example, be allowed to use their increased data access rights to inform their delivery of contracts for private sector clients, nor to inform their tenders for future contracts (whether these are for public or private sector clients).

4. Are these the correct principles that should be set out in the Code of Practice for this power?

We do not wish to comment on this.

Providing assistance to citizens living in fuel poverty

5. Should the Government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

We do not wish to comment on this.

6. Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

We do not wish to comment on this.

7. Are there other forms of fuel poverty assistance for citizens that should be considered for inclusion in the proposed power?

We do not wish to comment on this.

Access to civil registration to improve public service delivery

8. Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

We do not wish to comment on this.

9. Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

We do not wish to comment on this.

Combating fraud against the public sector through faster and simpler access to data

10. Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

We do not wish to comment on this.

11. It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the Fraud gateway be operational for before it is reviewed?

We do not wish to comment on this.

Improving access to data to enable better management of debt owed to the public sector

12. Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?

We do not wish to comment on this.

13. How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

We do not wish to comment on this.

14. It is proposed that the power to improve access to information by public authorities for the purpose of better managing debt owed to government will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the debt power be operational for before it is reviewed?

We do not wish to comment on this.

Access to data which must be linked and de-identified using defined processes for research purposes

15. Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

We feel that it is reasonable to charge fees, albeit on a costs recovery basis only. (There is a risk that the recipients will pass a large part – or maybe all – of these costs on to their customers, in the form of higher prices, but restricting fees to costs recovery will limit the impact of this.)

16. To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Yes.

17. What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

The main expected benefit of the research should be evidence, analysis and/ or policy recommendations that can be used to improve: (a) the health, skills, housing/ employment premises or socioeconomic well-being of UK residents and workers; or (b) the quality, affordability and accessibility of the UK's public services, networks and infrastructure or natural environment. If, in contrast, the main impact of the research is likely to be an adverse effect on the items listed under (a) or (b), or an increase in private sector profit, it is not in the public benefit.

Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

18. Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

Yes.

19. If your business has provided a survey return to the ONS in the past we would welcome your views on:
- (a) the administration burden experienced and the costs incurred in completing the survey, and
 - (b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics.

We have previously provided BRES (Business Register and Employment Survey) returns to ONS. We feel that the administrative burden and costs of doing so were

reasonable, though not trivial. Efforts to further reduce this burden and the associated costs would be welcome, but we have no specific solutions to suggest.

20. What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to processes that collect, store, organise or retrieve data?

We do not wish to comment on this.

**Resources & Business
Transformation**

Buckinghamshire County Council

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Service Director: Strategy and Policy

Sarah Ashmead

www.buckscc.gov.uk

Data Sharing Policy Team,
Floor 6,
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Contact: Martin Gibson

Direct Line:

Fax:

Email:

Your ref:

My ref:

Date:

Consultation of 29 Feb 2016

Gibson/001

21 April 2016

Dear Sir/Madam

The most critical part of the whole process is to get the agreement of the general public to share data freely in this way. The track record in getting the public involved and supportive in the UK to date is not good. The proposals themselves are relatively modest but it is important that the process is fully explained and accepted by the general public otherwise we risk a re-run of the Caredata project where a lack of public awareness increased suspicions about the project .

It is noted that the consultation documents seem to have coined a new word namely 'de-identified' associated with the data. The definition in section 33 of the consultation documents unhelpfully describes de-identified as 'data that does not directly identify a living individual, and so does not amount to "personal data" under the first limb of "personal data" under the Data Protection Act. This data could nonetheless potentially amount to personal data under the second limb of the definition if the individual to which it relates could be identified from the combination of that data with other data held or likely to be held by the data controller.' The problem with such definitions is that organisations will default the data to personal data and its associated restrictions.

This new definition seems at odds with the definition in the new General Data Protection Regulation which states that a 'data subject' means an identified natural person or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the

physical, physiological, genetic, mental, economic, cultural or social identity of that person;

Regarding the sharing of deceased person's data, this should be relatively easy as they are not subject to the Data Protection Act which relates to living individuals. It would seem a simple process to create a basic identity record with the minimum number of identifiers to prevent examples of sending correspondence to dead people. It is true that there would be residual rights of the deceased with the associated family under the Human Rights Act but as long as the amount of the deceased's data disclosed is minimal, that should not prove a problem.

Another thorny issue is that much recent legislation has been vague with regard to local government and appears to address all Councils as if these were metropolitan borough or unitary authorities. This makes it quite difficult to reconcile where the Authorities are County Council and Districts. Very often the legal gateways do not go far enough and can be used to defend lack of data sharing process. We would propose that the legislation applies equally to all authorities.

Looking further ahead with other potential sharing initiatives, it is important that we get the general public on board at this early stage.

Below are our answers to the twenty questions raised in the consultation paper.

Question one: Are there any objectives that you believe should be included in this power that would not meet these criteria?

At the request of an individual for a specific service.

It would seem that little consideration has been given to individuals seeking assistance. The process needs to be transparent otherwise it will lose whatever support, grudging or otherwise that it has.

Question two: Are there any public authorities that you consider would not fit under this definition?

Local government is changing the way services they provide are delivered with more services being devolved sometimes to private companies or individuals, and sometimes to internally created delivery vehicles. There are also the issues relating to new private organisations such as academies and how they fit in to the process.

Question three: Should non-public sector bodies (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the public service delivery power?

See answer to question two. If this is a serious proposal, it needs to include private organisations delivering services otherwise some may be tempted to hide behind the

shield of a devolved/private organisation. This would result in a reduction in the quality of data shared and exacerbate any users suspicions of the systems.

Question four: Are these the correct principles that should be set out in the Code of Practice for this power?

There needs to be care taken here as we believe as an organisation, current legislation is largely permissive of data sharing anyway and this has failed to 'encourage' some organisations to share. This is where Privacy Impact Assessments (PIA's) already come in to play. A PIA will highlight areas of weakness in data sharing. Some organisations might term these areas acceptable and get on with the sharing whereas other organisations will have set their parameters for sharing at a higher level. We need to take care that we are not creating another barrier to refuse to data share.

Question five: Should the Government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty or for any other reason?

This question is too wide. Sharing information with private organisations on the basis that citizens are suffering from fuel poverty is contentious enough. Widening the proposal to 'any other reason' is likely to fray away at public confidence in the proposal.

Question six: Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

Experience shows that if the client becomes engaged with the process, it is more likely to be successful. Automatic provision of rebates might encourage a 'laziness' to develop.

Question seven: Are there other forms of fuel poverty assistance for citizens that should be considered for inclusion in the proposed power?

See previous answer

Question eight: Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

Yes so long as the information accessed is kept to a minimum and there is an auditable sequence of events.

Question nine: Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

As details of deceased persons are not personal data, I believe that this data should be routinely available. The data will still be subject to the Human Rights Act which will hopefully protect the living relatives and help prevent correspondence with the

deceased. A list of what the data can be used for would be an added protection.

Question ten: Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

The first point to make is that since the introduction of data matching the returns from such matches are in our experience, manually intensive to resolve. In a typical year the fraud we identify by this method is dwarfed by the amount of resource taken to check out the matched data. If this method is proposed, it must be easier and less labour intensive to identify individuals.

The issue of data quality needs to be addressed as well as how data errors are to be dealt with.

The question of how long the data should be held is also an issue to be considered as well as a simple mechanism to allow clients to correct erroneous entries or matches. Where the data is stored, given the sensitivity of the information, will also be an issue.

Question eleven: It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the Fraud gateway be operational for before it is reviewed?

There should be a defined period for review. 3 Years which many organisations use as a default for data with unspecified retention periods would seem to be the best resolution.

Question twelve: Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?

Details of any individual on such a database would be extremely valuable to a private company so great care would need to be taken if it is decided to use these and we should have an audit trail. Fairness may never be achieved in the eyes of the 'victims' of debt but any method used needs to be transparent to the 'victim'.

Question thirteen: How can Government ensure that proposals for pilot data projects and the evaluation of projects under the debt power are effectively scrutinised against objectives?

Have an independent reviewer from the judiciary or other independent organisations. Self regulation similar to the Press Council process is unlikely to gain the confidence of the public which will be vital to the credibility of the whole process.

Neutral assessors would be the best option, although not quite as easy to find.

Question fourteen: It is proposed that the power to improve access to information by public authorities for the purpose of better managing debt owed to government will be reviewed by

the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the debt power be operational for before it is reviewed?

Similar answer to question 11. There should be a defined period for review. 3 Years which many organisations use as a default for data with unspecified retention periods would seem to be the best resolution.

Question fifteen: Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

Yes there should be a fee and there should be no maximum fee.

Question sixteen: To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Yes the more transparency the better.

Question seventeen: What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

- 1) Must have a defined and measurable outcome
- 2) Must not interfere or compromise basic human right principles
- 3) Must be held securely
- 4) Must protect the most vulnerable
- 5) Must be clear to clients what their data used for.

Question eighteen: Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purpose of producing National and official statistics and statistical research?

Yes but as we are not a research organisation this is not an area where we have the required expertise.

Question nineteen: If your business has provided a survey return to the ONS in the past we would welcome your views on:

- a) the administration burden experienced and the costs incurred in completing the survey, and at a basic level, the less interference with our business the better, if it is proposed that a notice may require the public authority to consult the Statistics Authority if the public authority proposes to make changes to the relevant processes for collecting, organising, storing or retrieving information. It is proposed that this requirement will run for the period of time that the notice is effective. This will greatly

increase the resource burden on the local authority and critically apart from raising costs will also increase the scope for error and eat away at the integrity of the process in the eyes of the general public.

b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to ONS for the purposes of producing National and other official statistics.

Inform the 'businesses' the purpose of the collection and to minimise the amount of data required to the basic to allow the job to be done. Secondly if data is required, please give 'businesses' the maximum notice time to prepare for any data sharing requirements.

Question twenty: What principles and factors should be considered in preparing the Code of Practice?

- Least interference with the lives of our clients
- Least interference with the ability of this organisation to function efficiently
- Security of the data
- Realistic retention periods (i.e. not interfere with our current retention periods)
- Allow organisations recourse to a mediator if the compliance burdens get too great
- Recognition that our first priority has to be our clients.and progressing your request.

Yours Sincerely

Martin Gibson
Data Protection Officer


Responding to the consultation


Your details

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity.

We will publish our evaluation of responses. Please note that we may publish all or part of your response unless you tell us (in your answer to the confidentiality question) that you want us to treat your response as confidential. If you tell us you wish your response to be treated as confidential, we will not include your details in any published list of respondents, although we may quote from your response anonymously.

Name (optional): Jeff Thomas

 Position (optional): Registrar


 Organisation name: Play Therapy UK

Address: 24 Elm Quay Court

Nine Elms Lane

London SW8 5DE

Email: 

Telephone (optional): 

Would you like us to treat your response as confidential?*

If you answer yes, we will not include your details in any list of people or organisations that responded to the consultation.

Yes No

Is this a personal response or an official response on behalf of your organisation?

Personal response

Official response

If you ticked “Official response”, please respond accordingly:

Type of responding organisation*

Business

Charity

Local authority

Central government

Wider public sector (e.g. health bodies, schools and emergency services)

University or other higher education institution

Other representative or interest group (please answer the question below)

Not for profit professional organisation managing the Register of Play and Creative Arts Therapists accredited by the Professional Standards Authority. _____

Type of representative group or interest group

Union

Employer or business representative group

Subject association or learned society

- Equality organisation or group
- School, college or teacher representative group
- Other (please state below)

Nation*

- England
- Wales
- Northern Ireland
- Scotland
- Other EU country: _____
- Non-EU country: _____

Registrants in 29 countries

How did you find out about this consultation?

- Gov.uk website
- Internet search
- Other

_____ ICAN _____

May we contact you for further information?

- Yes No

Questions

Improving public service delivery

Question one: Are there any objectives that you believe should be included in this power that would not meet these criteria?

No

Yes

If yes, please explain your reasons.

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.....

Question two: Are there any public authorities that you consider would not fit under this definition?

No

Yes

If yes, please explain your reasons:

More emphasis should be placed upon the role of local government authorities.....
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Question three: Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your reasons:

Contracting out services to private sector organisations is a cost effective way of delivering services if they are managed well by all parties. Small specialist organisations can be particularly effective if they are helped to be data guided.

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Question four: Are these the correct principles that should be set out in the Code of Practice for this power?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your reasons:

The text: 'no amending or weakening of the Data Protection Act' should be supplemented by 'and adoption of the forthcoming EU General Data Protection Regulation'.

We also suggest the addition here or elsewhere: The protection of data relating to children's health, emotional well-being and social care is especially important because of their vulnerability.

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Providing assistance to citizens living in fuel poverty

Question five: Should the government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

Strongly agree

- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

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Question six: Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

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Question seven: Are there other forms of fuel poverty assistance that should be considered for inclusion in the proposed power?

- Yes
- No

If yes, please explain your reasons:

We have no experience of this area.

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Access to civil registration information to improve public service delivery

Question eight: Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

This would go some way towards improving the services for vulnerable children.

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Question nine: Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to a deceased person)?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

Will reduce the level of distress but how can this be applied to responsible private sector organisations - detailed work required.

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Combating fraud against the public sector through faster and simpler access to data

Question ten: Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

Yes

No

Please explain your reasons:

We are not sure whether the whole subject of system security to avoid theft or alteration of data is within the remit of this proposed legislation or whether it should refer to such.

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Question eleven: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed?

One year.

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Improving access to data to enable better management of debt owed to the public sector

Question twelve: Which organisations should government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtor who owe multiple debts?

Not within our experience.

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Question thirteen: How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

This will required a detailed study to draw up an invitation to tender for this project and the choice of an appropriate existing Government funded agency such as the Care Quality Commission to implement it.

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Question fourteen: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed??

One year.

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Access to data which must be linked and de-identified using defined processes for research purposes

Question fifteen: Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

Yes

No

This is a major responsibility to improve public services within theror existing funding. The data should already be available internally for decision making.

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Question sixteen: To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Yes No

To improve practice.

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Question seventeen: What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

Add to: The Act describes serving the public good as:

(c) Contributes to the improvement of the delivery of a service designed to help the public and associated stakeholders.

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Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

Question eighteen: Is two years a reasonable maximum period of time for the

duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

Yes

No

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Question nineteen: If your business has provided a survey return to the ONS in the past we would welcome your views on:

a) the administration burden experienced and the costs incurred in completing the survey

Minimal - costs not worth identifying.

.....
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b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics

Agreement upon standardised formats with contributors from representative sectors. Probably best organised with the BSI.

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Question twenty: What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to the processes that collect, store, organise or retrieve data?

This requires another study group which includes representatives of small organisations. There must be a precedent that could be used as a guiding model.

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Warwickshire County Council response to Cabinet Office's Better Use of Data Consultation Paper

1 Context

Warwickshire County Council (WCC) welcomes the opportunity to respond to the Cabinet Office's Better Use of Data Consultation Paper. Effective use of data underpins all of our business processes and it is crucial that information is able to flow freely but appropriately within the organisation, and between partner organisations, to ensure we are offering the best possible service to our customers.

We agree with the general thrust of the consultation paper and its aim of clarifying and improving the sharing of data in order to improve the delivery of services to citizens. Sharing data to improve services is critically important and local government needs a clear mandate to share information as well as to protect individual privacy.

While acknowledging the need to improve data sharing to deliver better services to citizens, WCC's response draws on extensive work we have carried out with the Government Digital Service and other central government departments into online identity verification and attribute exchange. Attribute exchange, underpinned by a highly assured online citizen identity, will allow organisations to exchange eligibility information about a customer online, in real time, with the customer's explicit consent. For reference, this work has been written up and published on the Open Identity Exchange web site as a series of white papers:

- [Can attribute provisions, together with identity assurance, transform local government services?](#)
- [Towards an architecture for a digital Blue Badge Service](#)
- [A technical design for a Blue Badge digital service](#)

We are close to signing off a further project, again under the aegis of the Open Identity Exchange UK, that will extend our research to look at attribute exchange in the context of health related data.

A thread that runs through our response to this consultation is that mechanisms such as attribute exchange would remove the need for new legislation altogether in many use cases and would have the additional advantage of providing greater flexibility as circumstances change in the future. Legislation should only be necessary where it is genuinely unrealistic to expect customers to give consent for data to be shared. At a minimum, a set of data sharing principles should be set out that give primacy to data sharing based on customer consent

wherever possible. Clearly there are cases (e.g. fraud prevention) where it is not feasible to seek or expect consent to share data.

This response also draws on our experience of implementing a local partnership approach to counter fraud, funded by the DCLG's counter fraud initiative launched in 2015.

2 Consultation response

2.1 Redefining the three data sharing domains

The consultation paper divides the use cases into three groups: improving public services; tackling fraud and debt; and allowing use of data for research purposes and for official statistics.

We feel that these domains, and the use cases attached to them, should be redefined as follows: improving access to public services and benefits; enforcement and intervention; and allowing use of data for research purposes and for official statistics.

The rationale for this redefinition is that it distinguishes use cases where the customer might reasonably be expected to consent to data being shared (improving access to public services and benefits) from use cases where the customer may have reason not to consent (enforcement and intervention). The Troubled Families Programme use case would fall under the enforcement and intervention category where public authorities are more likely to be intervening rather than being invited by the customer to deliver a service. Data sharing is used to identify target families, so prior consent from the citizen is infeasible.

This distinction is important because it correctly distinguishes situations where "It is not realistic and practicable to use consent to achieve the intended outcome or use of consent would not meet the criteria of free and informed decision making" (page 10, 36 (b)) from situations where it *is* realistic and practicable.

In the "improving access to public services and benefits domain" our work on attribute exchange demonstrates that verified online customers can (and will) give explicit consent for organisations to exchange data in order to prove eligibility and speed up the delivery of services. The data can be exchanged online in real time in a way that can radically transform service delivery. Furthermore, because the data is exchanged with explicit and informed customer consent it can be done *without the need for any further enabling legislation*.

Attribute exchange will deliver a range of benefits:

- data sharing driven by citizen consent;
- minimisation of the data shared (a "yes/no" response to a question framed as "is this person eligible for service x) is often sufficient;
- the data shared is specific to the transaction in hand and hence proportionate;
- the process is completely transparent: it is clear what data is being shared, with whom and for what purpose;

- data can be shared online, in real time as part of a digital transaction, allowing complex end-to-end services to be delivered more conveniently, quickly and cheaply.

Customer consent is the only reliable way to build trust and should be used in preference to enabling legislation wherever possible and practicable.

With the domains redefined in this way it is possible to apply some guiding principles to the “improving access to public services and benefits” domain.

2.2 Guiding principles to underpin “improving access to public services and benefits”.

Care.Data has demonstrated that trust is a crucial component in any proposal for data sharing. Without trust data sharing initiatives can be completely derailed. Our work on attribute exchange has demonstrated that trust can be quickly and effectively established in a data sharing ecosystem (involving customers, service providers and attribute providers) by applying some simple principles. These are more effective in establishing trust than legislation will ever be.

In developing these principles we have followed the example of the Government’s Identity Assurance Programme (GOV.UK Verify) and the underpinning Identity Assurance Principles¹. By building in privacy by design these principles have been instrumental in establishing trust in GOV.UK Verify.

In order to deliver effective, transformative data sharing to improve access to public services and benefits we recommend that data sharing mechanisms should adhere to the following principles wherever possible:

- Obtain explicit consent from the customer for data to be shared;
- Share data that is specific to the transaction in hand;
- Minimise the data shared;
- Build in transparency - what data is being shared, with whom, and why;
- Allow data to be shared online and in real time to support immediate and paper free proof of eligibility;
- Ensure online consent is based on a highly assured online customer identity (at Level of Assurance ², e.g. GOV.UK Verify).

The consultation should explicitly recognise that data sharing mechanisms underpinned by these principles, such as attribute exchange, do not require any enabling legislation and represent best practice.

¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361496/PCAG_IDA_Principles_3.1_4_.pdf

² For a definition of the levels of assurance see <https://www.gov.uk/service-manual/identity-assurance>

Attribute exchange is directly applicable to a number of the use cases mentioned in the consultation document in the “improving public services” and “tackling fraud and debt” domains:

- Assisting citizens living in fuel poverty
- Paragraphs 60 a), b), c), e), f) on page 16 referring to the use of registration data
- Application for child benefit
- Preventing mortgage fraud
- Preventing tenancy fraud
- Assessing eligibility for court or tribunal fee remission
- Assessing exemption from student loan repayments (but not ongoing exemption)

Attribute exchange also has the potential to address the concerns around health and care data referred to in the consultation document on page 8, paragraph 28.

2.3 Embracing appropriate technological solutions

There are technologies and specifications available and being developed that can make a direct contribution to better use of data. We have already mentioned our own pioneering work on attribute exchange.

Personal data stores are a technology specifically designed to put customers in control of their own data and the permissions they give for that data to be shared. There are many use cases for personal data stores, but one of the most compelling which is relevant to this consultation paper, is the MiData initiative. If utility companies were obliged to make detailed transaction information available to a customer’s personal data store on request this could become the basis for intelligent contract switching applications based on rich, detailed transaction information. This would lead to more informed customers and would make the contract switching process much more seamless and attractive. This in turn could help address fuel poverty, which is one of the express outcomes mentioned in this consultation. This could be achieved while still putting the customer in control of their own data.

The consultation should recognise the potential of personal data stores to empower consumers and ensure that suitable legislation is in place to support this sort of initiative.

The recently ratified User Managed Access (UMA) specification³ also promises a more effective ongoing means for customers to manage the consents they have given for data about them to be shared. Again, putting the customer in control of the process and providing effective mechanisms for them to set up, manage and revoke data sharing permissions is the best way to build trust.

2.4 Avoiding unintended consequences

Attribute exchange is currently in a prototype form, but we hope to be in a position to go into a beta phase in 2016/17. It is critical that the legislation being brought forward does not have

³ See <https://kantarainitiative.org/confluence/display/uma/Home>

any unintended consequences of putting barriers in the way of attribute exchange as a mechanism for sharing data. Although the risk of unintended consequences may be low, given that attribute exchange is carried out with the customer's full and explicit permission in relation to a specific transaction at a specific point in time, we urge ministers to keep this requirement in mind when framing new legislation.

2.5 Answers to specific consultation questions

2.5.1 Question 1. Are there any objectives that you believe should be included in this power that would not meet these criteria?

As mentioned in section 2.1 above we feel there would be greater clarity if 2 out of the 3 data sharing domains were redefined and the use cases reallocated across the domains. Including the Troubled Families use case in "Improving public services" conflates situations where customers voluntarily seek services with situations where there is a degree of enforcement. These use cases call for different data sharing mechanisms. It is only in the case of enforcement that it is essential to allow data sharing without customer consent, and where new legislation is strictly necessary. In the cases where customers would voluntarily seek services or benefits we have demonstrated that it is possible to design effective online mechanisms for sharing data that remove the need for new legislation by seeking explicit customer consent on a transaction by transaction basis.

2.5.2 Question 2. Are there any public authorities that you consider would not fit under this definition?

One of the benefits of the attribute exchange model set out in this consultation response is that it is generic and not specific to any particular service domain. It is equally applicable to private sector bodies as it is to public sector bodies, with the customer remaining in control of any data sharing in all cases. By putting the customer in control of the data sharing the attribute exchange mechanism is more flexible than legislation can ever be. It can cover situations - for example right to rent and right to work - where private sector organisations need to access data held in the public domain.

The enabling effect of consent given by a verified online customer should be explicitly recognised.

2.5.3 Question 3. Should non-public sector bodies (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the public service delivery power?

Yes, they should, particularly as local authorities are commissioning more and more services from the private and third sector. As noted in response to question 2, the attribute exchange

mechanism would cater for these circumstances anyway, as well as circumstance where private sector organisations are delivering non-public sector services that rely on data from the public sector. The key aim should be to improve service to customers across the public and private sectors by adopting, wherever possible and practicable, data sharing mechanisms that are generic rather than specific and governed by customer consent rather than legislative frameworks.

2.5.4 Question 4. Are these the correct principles that should be set out in the Code of Practice for this power?

As mentioned in section 2.2 above, there should be an overarching set of principles that define best practice for data sharing in the "improving public service delivery" domain, and give the customer explicit control of the process on a transaction by transaction basis.

2.5.5 Question 5. Should the government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty or for any other reason?

Yes, as long as there are clear data sharing protocols in place (with the public sector as the lead organisation), and the sharing is covered by an appropriate privacy notice.

Take-up of assistance of this type could also be improved through:

- Better signposting of services when a customer is eligible for a "passporting" service
- Attribute exchange spanning the public and private sectors
- Use of Personal Data Stores as a way of customers storing certificates of eligibility and choosing when to share these with energy suppliers

2.5.6 Question 6. Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

Yes, although energy efficiency support needs to include local schemes and also needs to be wider than the current Warm Homes Discount being applied to those with a pension credit guarantee. This excludes, for example, families that are eligible.

2.5.7 Question 7. Are there other forms of fuel poverty assistance for citizens that should be considered for inclusion?

Yes, delivery of the Energy Company Obligation going forward, and other locally funded schemes where data would enable better targeting of fuel-poor households.

2.5.8 Question 8. Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

Use cases such as this could be satisfied with attribute exchange that embeds explicit customer consent. This has the added benefit of driving service delivery online which is cheaper to deliver, more convenient for the customer, and capable of giving a real time, online confirmation of eligibility. This would in turn allow public sector organisations to immediately signpost other services that are based on the same eligibility criteria. Checking eligibility online at the point of application is also a powerful way to prevent fraud and error occurring. It should be stressed that having ready access to registration information is important for fraud detection and investigation in off-line situations.

2.5.9 Question nine. Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

There is a case for automatically sharing information about deaths as there is clearly a limit to citizen consent being sought in that case. For other registration events Tell Us Once already delivers a customer-permissioned mechanism to achieve this, which is preferable to bulk transfer of records. However, it should be stressed that having ready access to registration information is important for fraud detection and investigation in off-line situations.

The provision of a data matching platform component, available across the public sector, would significantly simplify the processing of death details and Tell Us Once notifications. This sort of technology is currently beyond the means of many public bodies and should be considered as part of the Government as a Platform initiative.

There needs to be a more consistent and clear statement of which organisations this data is shared with /available to - and this will become a legal requirement as part of the EU Data Protection Regulation in 2018.

2.5.10 Question 10. Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

It is better to prevent fraud and error than to detect it after the event, and this should be explicitly mentioned as best practice. Attribute exchange, as a mechanism for checking

eligibility for service online, in real time as part of an application for service, has the potential to *prevent* fraud and error in a way that is quicker and cheaper to implement than other data sharing methods. However, in the realm of fraud we recognise that it is essential to have a clearer legislative framework to allow public authorities to share data without customer consent in order to detect fraud after the event. Our own experience of setting up a counter fraud partnership is that different interpretations of existing data sharing legislation is the biggest barrier to quick and efficient progress. We welcome the proposals to facilitate data sharing for counter fraud and support the measures designed to achieve transparency.

2.5.11 Question 11. It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the Fraud gateway be operational for before it is reviewed?

Our experience suggests that 2 to 3 years is the minimum required for any pilot unless substantial parts of the infrastructure and partnership agreements are already in place. There is a need for coordination between local counter fraud initiatives and the National Fraud Initiative in order to avoid duplication.

2.5.12 Question 12. Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?

No specific view

2.5.13 Question 13. How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

No specific view

2.5.14 Question 14. It is proposed that the power to improve access to information by public authorities for the purpose of better managing debt owed to government will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the debt power be operational for before it is reviewed?

No specific view

2.5.15 Question 15. Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

It should be possible for public authorities to cover their full costs for providing data for research purposes where it has to be de-identified. However, if the information is already anonymous there should be an expectation that it will be provided as 5 star open data at no cost to the research organisations.

2.5.16 Question 16. To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

It would be more effective if the UK Statistics Authority or a similar body could adjudicate and rule in the case of dispute.

2.5.17 Question 17. What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

A principle of "improving the health and wellbeing of citizens" should be included.

2.5.18 Question 18. Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

No specific view

2.5.19 Question 19. If your business has provided a survey return to the ONS in the past we would welcome your views on: (a) the administration burden experienced and the costs incurred in completing the survey, and (b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics.

Not applicable

2.5.20 Question 20. What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to processes that collect, store, organise or retrieve data?

No specific view

Better Data in Government Consultation Response

Submission from defenddigitalme - April 2016

About defenddigitalme

defenddigitalme is a campaign group for children's privacy rights formed in mid 2015 in response to concerns from parents and privacy advocates about increasingly invasive uses of children's personal data in education. The campaign asks the Department for Education (DfE) to change their policies and practices to protect 20 million children's identifiable personal data in the National Pupil Database (NPD):

- stop handing out identifiable personal data to commercial third parties and press without consent
- start telling pupils, their guardians and schools what DfE does with personal data
- be transparent about policy and practice

We seek future-proofed and ethical, legal and regulatory frameworks in data policy and practice. More information: <http://defenddigitalme.com/>

In the interests of full disclosure we also mention that our Coordinator, Jen Persson is one of two lay members of the Administrative Data Research Network (ADRN) Approvals Panel.¹ She attended the consultation and code of practice Open Policy meetings in 2016.

Summary

The Ministerial foreword² says: "we need to keep pace with both rising public expectations and the availability of new technology," and so we bring some of the policy making discussion on these themes into the written consultation. The structure of the consultation is such that themes cross into multiple questions, but the questions do not address all the issues. We respond instead with a structured approach that cuts across the six strands of the consultation.

We provide some specific examples of **positive public engagement** and hands-on research from **public attitudes to administrative data** sharing from 2013-6 to include wider voice.

While this legislation is designed to clarify the question 'can we' share individuals' personal data without consent, it offers little to support Public Service delivery users deciding 'should we.' We therefore suggest thorough attention is given to address the gap in an **ethics framework provision**.

Children, need particular attention given when sharing their data, and must trust that data given for one thing today, are not used for something different tomorrow, or that they or their future relations find themselves adversely affected as adults by decisions made today³ or in '**Troubled Families**'. We outline **the National Pupil Database as a case study** of how-not-to-do datasharing legislation.

And we suggest some areas of consideration in the area of '**new technology**' that require greater thought in this legislation, which is written based on past and current practice, but is unfit for future data policy and lacks any ethical framework to support good practices, as technology changes.

¹ <https://adm.ac.uk/application-process/approvals-panel/>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf

³ <http://blog.23andme.com/23andme-customer-stories/an-unexpected-discovery/>

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Introduction

We do not address the increased access to data for statistical purposes or in any depth the access to de-identified data for research purposes. These data uses are in safe settings, by safe people: data prepared by qualified data professionals, using trained data handling techniques, and raw data cannot leave the safe setting with the researcher. Those researchers use data, but don't hold onto it. We do however make reference to the public engagement work done by those data stakeholders.

Our concerns focus on increased access to and use of identifiable personal data in and across public services and with commercial energy companies, with a specific interest in children's privacy rights.

We agree that clear and consistent approaches will be beneficial across Departments and at local level if the public is to understand how government and citizens interact.

Consistent datasharing should seek to meet the best of current practice and most challenging of public expectation and engagement. Quick fix approaches are not future-proofed and at best in the past have only delayed public contempt when they went wrong, with damaging consequences to already fragile public trust, as proven in care.data⁴, jeopardising the opportunities that good datasharing can offer. We suggest more forward thinking on technology and future uses of data.

It is positive that these proposals are 'not about selling data, collecting new data from citizens or weakening the Data Protection Act 1998' and we hope to see consistently good practices across government Departments develop over time. Right now this consultation could offer an opportunity for fixing where public bodies are selling public or personal data, collecting data from citizens into big databases, actions or principles that are out of step with the Data Protection Act 1998 today.

We suggest that in order to avoid arriving at the simplistic outcome from the thinking 'make it easier to share the public's confidential and personal data legally without consent' there needs to be a more detailed grasp of what these data plans (varying in scope) each change in practice, compared with what is done today. 'We don't share data very well' will not be improved by sharing more data.

Today, as a starting point we therefore propose thorough consideration is given to solutions looking back at some of the well known issues of data collection and releases in practice, and how they impact today, as was discussed in the policy discussions but not included in the consultation paper. Lessons need learned from applied practices which have been consistently in need of change over the last ten years;⁵ investment of time and funding of training, understanding and applying existing DPA legislation, applying knowledge gained from data, from failures, and accountability.

⁴ <http://www.theguardian.com/commentisfree/2014/feb/28/care-data-is-in-chaos>

⁵ http://www.fipr.org/childrens_databases.pdf

1. The Current Landscape

At UK level, we should implement the best of what has already been proposed by the Select Committee. The consultation should support the call contained in the 2014 report 'Responsible use of data', "*the Government has a clear responsibility to explain how personal data is being used.*"⁶

In line with current pro-European government talk, it is time now to act to support our citizens human rights. Government Departments should act on the CJEU in 2015⁷ ruling that reiterated the existing need for all public bodies to ensure fair processing before sharing personal data with any other public body, as enshrined in Principle 1 of the Data Protection Act 1998.

The European Union is introducing a General Data Protection Regulation (GDPR)" [Consultation p8 item 25.]⁸ How this will safeguard children's rights should also be actively considered.

2. The United Nations Convention on Rights of the Child⁹, especially the following articles should be given proper consideration

Article 3: the best interests of the child must be a top priority in all things that affect children

Article 12: a right to be heard and express views in decisions about them

Article 16: Every child has a right to privacy. The law should protect a child's family and home life

Article 29: Education must [...] encourage the child's respect for human rights, as well as for their parents, their own and other cultures, and the environment

While the Consultation makes reference to The Human Rights Act 1998 and the European Convention on Human Rights and the DPA 1998, it does not mention children's rights legislation.

"Public authorities accessing and disclosing information under the proposed powers will need to ensure compliance with the Human Rights Act 1998, in particular Article 8 of the European Convention on Human Rights and other relevant measures relating to data protection set out in law." [Consultation p9 item 26]¹⁰

We ask the consultation considers children's rights where their data will be included in changes.

We seek solutions to concerns with opening up vulnerable communities' and individuals' personal data in the name of helping, but without their consent, to wider audiences of police, debt collectors, energy companies and other public bodies, especially where children may be 'labelled for life'.

We include a case study from an NGO involved in education that was brought to our attention recently. Legislation designed to target individuals with the best of intents, but without safeguards, could easily become authoritarian if misused. Safeguards and transparency are needed to avoid this.

⁶ <http://www.publications.parliament.uk/pa/cm201415/cmsselect/cmsstech/245/245.pdf>

⁷ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150110en.pdf>

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final__3_.pdf

⁹ http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final__3_.pdf

3. Public Engagement on Administrative Data in Research

What does the wider public know or want to happen on the use of their personal data by others?

In 2013, the ESRC collaborated with the Office for National Statistics (ONS) to run public dialogues across the UK to understand how people view using and linking our data for research.

'The dialogues, run by Ipsos MORI, comprised of events in Manchester, London, Stirling, Cardiff, Wrexham, King's Lynn and Belfast. During the two day-long sessions, participants - recruited from a cross-section of people - worked with trained facilitators and experts to discuss the challenges of linking administrative data for research purposes.

The workshops explored attitudes around the re-use of sensitive data, mandatory and voluntary data collection and long-term data storage and data linking, and, specifically examined the re-use of public data for research purposes in de-identified formats in safe settings.

Later, in 2014 the Royal Statistical Society carried out research and found nearly all institutions suffer a "data-trust-deficit". Trust in them to use data appropriately is lower than trust generally.

These two sample research projects in 2013 and 2014 identified similar and consistent public opinions and concerns around administrative data sharing and public benefit, and was echoed in the care.data public debates of 2014. Generally there is a consistent lack of trust in government uses of data for individuals' well being, and trust in private companies' motivations is low. Strong public support exists for public benefit research and equally strong, lack of support in 'for-profit' uses.¹¹

Similar concerns included:

- Lack of consent to data used about them
- Risks of profiling or pigeonholing individuals or areas
- Data accuracy and poor quality data, resulting in poor quality decisions and policy making
- Data Protection Act: widespread cynicism about others' respect for this and its enforcement

Red lines included:

- Allowing administrative data to be linked with business data
- Linking of passively collected administrative data, in particular geo-location data
- Allowing researchers for private companies to access data, either to deliver a public service or in order to make profit.
- Remote access to de-identified data safe settings was a no-no
- Creating large databases containing many variables/data from a large number of public sector sources

The consultation foreword¹² says: "we need to keep pace with [...] rising public expectations" - public expectations are clear: to understand how data about them are used, for what and by whom. Linking of passively collected data, allowing administrative data to be linked with business data, private companies access for profit, profiling, and large databases collections are all unpopular.

How will the legislation and code of practice cater for this?

¹¹ <http://www.esrc.ac.uk/public-engagement/public-dialogues/public-dialogues-on-using-administrative-data/>

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf

3a. 2013 Dialogue on Data¹³ : ESRC & ONS workshops across the UK

Sample comments:

“Concerns that administrative data could be inaccurate, especially where it is self-reported, and that this could have negative consequences for individuals or groups. For example: Using linked administrative data to justify and implement controversial policies, such as the bedroom tax.”

“Further public dialogue or research would be needed for any expansion of the ADRNs remit. Specifically, further research should be done to understand the public’s views on allowing businesses to access linked administrative data.” [page 6]

“Profiling or pigeonholing individuals or areas. This was raised with reference to the case study examples of the National Pupil Database and the Index of Multiple Deprivation. While participants could see the value of both sets of linked data for improving services and allocating resources, they also thought that they could lead to unintended negative outcomes for specific types of people or those living in particular areas.” [page 19]

“A few participants who had multiple interactions with government services repeatedly returned to the issue of lack of consent for further uses. They thought the lack of explicit consent had a bearing on whether data should be shared and linked or not—for example a participant who had been in care strongly disagreed with his data being linked for research purposes without his explicit permission.”

“Concerns driven by experience (either personal or through friends and family) of their data being shared or sold by private companies without their express permission.”

“Participants were also worried about personal data being leaked, lost, shared or sold by government departments to third parties, particularly commercial companies. Several participants had experiences that made them think that hospitals pass on data about those who have been in accidents to insurance companies.”

“Low trust in government more generally seemed to be driving these views.”

Accountability is important but undefined in the consultation or code of practice. Challenging new agreements as a whole, and the outcomes of specific use of data both need named persons/positions as are assigned in the applications process for academic research uses of data and the accountable person is named in the ethics application for review at the ethics committee stage.

Named accountable data owners in every use of public data as done in research, may be helpful.

¹³ <http://www.esrc.ac.uk/files/public-engagement/public-dialogues/dialogue-on-data-exploring-the-public-s-views-on-using-linked-administrative-data-for-research-purposes/>

3b. 2014 Ipsos MORI for the Royal Statistical Society: the Data Trust Deficit¹⁴

This research identified similar and consistent public opinions and concerns around administrative data sharing and public benefit.

A whopping 50% disagreed government and public services have the citizen's best interest at heart when they use their personal data, while only 11% tended to agree that they did.

The inverse was similar. A majority 63% felt government and public services *"used my personal data, for their benefit, not mine."*

"The trust in companies using personal data for the best interests of the individual not the company was even lower, at 6%."

"However, even within the public sector, public support for data-sharing is very dependent on the exact situation, and need reassurances to allay their concerns."

"When asked to give their overall views towards data-sharing within government, people are more worried about the risks to their privacy and security than the benefits that data-sharing might bring, by 44% to 33%. But when told that data will be anonymised, this turns around to a majority in favour of data-sharing (55%, to 28% who think the risks outweigh the benefits)."

4. Ethics - can we vs should we? A decision making support tool

Without a strong ethical framework in either legislation or code-of-practice, it is hard to see how decisions will be applied consistently or always in the spirit that legislation was intended.

The de-identified academic research strand has ethical review built-by-design into every data use in the form of RECs as part of the application process. These consider whether the research will have contact with individuals (rare) or whether the outputs from the research could be discriminatory.

What it does not do is consider individual ethics which are not taken into account.

Some individuals would, given the choice, object to their data being used at all in research. For others, some object based on conscientious objection; for example related to contraceptives, or pregnancy terminations, or having their children's data included in MOD research.¹⁵

Their rights of objection should be addressed if research intends to aim for high standards across the board. The right to opt out of some identifiable data sharing in health research will take effect shortly. If ethical, data uses should not be exploitative, risk harm, prejudice, identification and more.

¹⁴ <https://www.ipsos-mori.com/researchpublications/researcharchive/3422/New-research-finds-data-trust-deficit-with-lessons-for-policy-makers.aspx>

¹⁵ <http://schoolsweek.co.uk/mod-makes-inappropriate-request-by-mistake/>

The 2013 Dialogue on Data¹⁶ : ESRC and ONS surveys and fourteen workshops across the UK found that there were boundaries for the most sensitive data, even for use in research in de-identified form, rightly realising that data are either aggregated statistics or are at individual level and identifiable or potentially identifying.

Hence the reason why academic research using linked data well, is carried out in safe settings, by trained accredited researchers, after projects go through an ethical review process.

“Within this overall view though, some particularly sensitive types of information were seen as too personal to be shared outside of the agency that collected it, for example records of domestic violence, or HIV status, because of the potential consequences of the data getting into the wrong hands.” [ESRC Dialogue on data, 2013]

Sensitive, fully identifying data will not be used in safe settings for public services targeting, but at ordinary work desks, and not by managed researchers¹⁷ after a consistent accreditation process to ensure a standard approach to data analysis, protection, or practical handling, but staff who have been shown ‘what they need to know’. Using identifiable data, without any ethical review.

What contrast between the safe-setting best practices for only potentially identifying data and the keep-your-fingers-crossed potential risks of increasing identifiable sensitive data used ‘in the wild’.

From the public body side, sharing identifiable data for any indirect uses, code of practice might consider what safeguards are in place to prevent unethical requests being rejected by one body but accepted by another, or decisions based on who gets the application on which day of the week.

If identifiable data are to be used only for direct interventions then it should be more clearly defined what does not already exist today that is required. What don’t we do today in our public services that will be done to individuals in future as a result of these changes?

Ethical considerations in research¹⁸ may be a better basis for citizens, than ‘user needs’ to prioritise in codes of conduct and should include considerations of autonomy, anonymity and risk analysis.

Using an individual’s data should not be punitive or harmful to that individual, but in the case of families, what may be good for one, could be seen as detrimental to other family members. What ethical considerations are to be made for data sharing for the tailored public services sharing?

Academic research creating heat list mapping using predictive technologies are thorny ethical issues that are already in play in the UK, and applied with police in practice and in social media projects¹⁹. What solutions are there to known problems²⁰ and will these changes address or ignore them? Personal data is increasingly commodified, and this is widely felt unacceptable²¹. For many children their lack of ability to give informed consent exploits trust, so additional protections must be assured by providers/users. It is unethical our children’s personal data are exploited today.

¹⁶ <http://www.esrc.ac.uk/files/public-engagement/public-dialogues/dialogue-on-data-exploring-the-public-s-views-on-using-linked-administrative-data-for-research-purposes/>

¹⁷ [http://eprints.uwe.ac.uk/22329/2/_nsta-uwe12_users\\$_fj-ritchie_Windows_Downloads_wp.15.e.pdf](http://eprints.uwe.ac.uk/22329/2/_nsta-uwe12_users$_fj-ritchie_Windows_Downloads_wp.15.e.pdf) Desai, T, Ritchie, F (2009) Effective researcher management

¹⁸ https://adm.ac.uk/media/1172/ethics-and-administrative-data-guidance_00_08_pub.pdf

¹⁹ <http://www.cosmosproject.net/>

²⁰ <http://research.gold.ac.uk/11079/1/mcquillan-algorithmic-states-of-exception.pdf>

²¹ <http://www.esrc.ac.uk/public-engagement/public-dialogues/>

5. Prescribed Persons: A Current Case Study - The National Pupil Database

The National Pupil Database, is a case study in data handling not fit for the volume and the sensitivity of administrative data that it contains that can be shared at the press of a return key.

The National Pupil Database is now “one of the richest education datasets in the world”²² holding a wide range of confidential and sensitive personal data from almost every child in England since 2000, through their education from age 2 to 19, and now includes nearly 20 million individuals.²³

Today’s practices were found lacking by The Government Internal Audit Agency (GIAA) who have rated assurance as ‘Limited’. Improvements should be made over vetting and validation of applications to access the National Pupil Database, information retention procedures, and data handling guidance, according to The DfE Consolidated Annual Report and Accounts 2014-15 published on April 20, 2016.²⁴ [p40]

The UK Statistics Authority²⁵ also support our position in April 2016, that increased transparency to parents and pupils is required, as well as improved arrangements for ensuring the secure handling and end of project functions of NPD data (for example, ensuring that data is destroyed by third parties post research).

Confidential personal data, and sensitive or highly sensitive data are shared with a wide range of third parties. These data include candidate numbers, names, ethnicity and disability, special needs, detailed breakdowns of special educational needs, whether the child has local authority looked after status, are children of military service personnel, their reasons for absence or exclusion and whether they are recipients of free school meals, as well as a lifetime of educational attainment and notes.

Digital identity and biometrics are now literally our passport to the world. Our online and offline identity, and associated identifying data, online rights and responsibilities, should be equally respected and protected. How will all these sensitive data be future proofed to protect their futures?

It is not the stripping of identifiers that makes data secure. If that were the case then de-identified data would be handed out freely, not treated with the respect that serious data users give it. Inside a safe setting trained data users can take only a pencil, no phone. There are cameras, there is no internet. They can use the data, but not take it away. Safe settings, safe users and safe data.

In Department practice today, this is not the case. The Department for Education gives out copies of nearly 20 million children’s confidential personal data from the National Pupil Database to commercial third parties and press own settings, without informing schools, parents or pupils.²⁶

Releases²⁷ include giving out named data, and sensitive data to television and Fleet Street press.

²² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472700/NPD_user_guide.pdf

²³ https://www.whatdotheyknow.com/request/pupil_data_national_pupil_databa_2#incoming-764676

²⁴ <http://defenddigitalme.com/2016/04/improvement-needed-over-access-to-childrens-national-database/>

²⁵ <https://www.statisticsauthority.gov.uk/wp-content/uploads/2016/04/Letter-from-Ed-Humpherson-to-Jen-Persson-220416.pdf>

²⁶ <http://defenddigitalme.com/> and https://www.whatdotheyknow.com/request/pupil_data_national_pupil_databa_2?nocache=incoming-764676#incoming-764676

²⁷ http://defenddigitalme.com/wp-content/uploads/2016/04/DDM_shared_examples_April2016.pdf

Example 1: TV journalist, identifiable, highly sensitive personal data - population-wide data

A BBC television journalist in August 2014 was given Tier 1 identifying and highly sensitive data. They describe in their application how they will take small number rules into account using the data, because they are identifying and “*School-level data is not helpful.*”

A full copy of the data application request was obtained through a Freedom of Information Request and is publicly available via What Do They Know.²⁸

Example 2: Newspaper journalists, ca 10 million children, sensitive identifiable personal data

Ten Telegraph journalists were given the personal data of ca. 10m children in February 2013.²⁹ The newspaper offered “*cast iron assurances that no pupil will be identified through our use of the data.*” and received 5 years worth of identifying individual level and sensitive Tier 2 data. [see letter³⁰] If the data were not identifying there would be no need to offer this assurance.

Processing sensitive data requires additional DPA conditions to be met.³¹ The business cases in applications by journalists do not contain any indication how they meet schedule 3 conditions.

There is no proven ‘need’ nor ‘benefit’ to the individuals of releasing these identifying sensitive data like SEN or ethnicity. No audit had ever been done at the time we asked DfE this, to identify whether any benefits of the data release [see FOI 20 Aug 2015]³² were achieved to meet the legal requirement for release: “*promoting the education or well-being of children in England.*”³³

5b. The wording of the Legislation matters - purposes and persons

Section 114 of the Education Act 2005, and section 537A of the Education Act 1996, together with the 2009 Prescribed Persons Act, updated in 2013, specifically allows the release of individual children’s data to third parties which in practice has permitted data to get given to journalists, commercial third parties and charities.

Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009 (Amended 2013).

persons who, for the purpose of promoting the education or well-being of children in England are—

- (i) conducting research or analysis,*
 - (ii) producing statistics, or*
 - (iii) providing information, advice or guidance,*
- and who require individual pupil information for that purpose.*

How will prescribed purposes, persons and public bodies in the ‘Public Services’ legislation compare? Safeguards must prevent future scope creep as has happened to our pupil data.

²⁸ <https://www.whatdotheyknow.com/request/293030/response/723407/attach/10/BBC%20Newsnight.pdf>

²⁹ <https://www.whatdotheyknow.com/request/293030/response/723407/attach/3/Daily%20Telegraph.pdf>

³⁰ <https://www.whatdotheyknow.com/request/293030/response/738135/attach/2/Annex.pdf>

³¹ <https://ico.org.uk/for-organisations/guide-to-data-protection/conditions-for-processing/>

³² https://www.whatdotheyknow.com/request/pupil_data_application_approvals#outgoing-482241

³³ <http://www.legislation.gov.uk/ukSI/2013/1193/regulation/2/made>

6. Considerations for particular regard to Children and Young People

We have three key concerns in regards the new powers specific to children and young people.

1. That the powers under Tailored Public Services are targeting, labelling and may last a lifetime
2. Decisions may be based on technology that children or their guardians cannot see or perhaps understand and are therefore disempowered by
3. That current powers may be sought to be misused and we have little safeguards in place to protect children from them today. Increasing data sharing may further increase this risk.

The case study we wish to present is of a non-governmental educational body which told us of an incident in which a sixteen year old was a victim of a crime. A police officer requested unrestricted access to the school pupil record, "to see if they could find a reason why the pupil would have had anything to do with what happened." The Data Compliance Officer was most concerned, knowing the pupil's record and knowing it contained nothing of any relevance and that there was no grounds for a search of the record. It was 'a fishing expedition', yet the police were insistent. On asking for further information and raising an objection, the school Data Compliance Officer was threatened with being taken to court.

To which the DCO told us, "*it was ironic, I was being threatened with the law, but if I did give the police officer what I felt was unnecessary, it could result in me breaking the law.*"

The school Data Protection Office knew the student, the situation, and the school record, and the current law well enough to give robust defence of why it should not be shared. If a law is created for which the presumption is data would be shared between the prescribed bodies, how would a similar situation be in the best interests of the child and support the DCO to defend the pupil's privacy - better or worse than today?

6b. Geographical and Devolution Considerations for Children

Laws particular to children are not consistent across the UK. The geographical scope and issues specific to devolution will potentially affect what data are available to copy and transfer elsewhere.

The consultation says that: "Discussions have taken place with officials in the devolved administrations about the proposals and how they might allow for UK-wide coverage should their Ministers and legislatures wish to adopt this legislation."³⁴

Data collection and dissemination is different between the devolved nations. For example, the highly controversial role of a Named Person is a key part of the Children and Young People (Scotland) 2014 Act³⁵ will start to collect vast amounts of subjective opinion on a wide range of "risk indicators"³⁶ for every child in Scotland from August 2016 and has resulted in backlash³⁷. Should public bodies be permitted to share across boundaries, one could see that the level of invasion of privacy for children in some regions could be potentially of vastly different degrees.

Would English police be able to access Scottish Named Persons data on children for example?

³⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final__3_.pdf Consultation paper p 10, item 30

³⁵ <http://www.gov.scot/Topics/People/Young-People/gettingitright/about-named-person>

³⁶ <http://www.gov.scot/Publications/2012/11/7143/9>

³⁷ <http://no2np.org/named-person/>

In general regards children and young people's data sharing we need "a new framework for child protection, provision and participation online that results in clear and effective policy that is born of real needs, targets specific and evidence-based risks, includes measurable goals [...] policy implementation is independently evaluated."³⁸ [Livingstone, Sonia and O'Neill, Brian (2014)]

There are no clear legal obligations of confidentiality that apply to the deceased but they vary in different places and should be considered.

We support the work and aims of the Royal Statistical Society in their efforts for the timely registration of deaths and the production of statistics.

Nevertheless since the scope of legislation is cross border, and in Northern Ireland, for example, the DHSSPS, Department of Health and the General Medical Council previously agreed there is an ethical obligation requiring that confidentiality obligations continue to apply after death.³⁹

The Common Law Duty of Confidentiality arguably applies to deceased patients' records, as per the Information Tribunal Appeal Number: EA/2006/0010 of 17 Sep 2007 between Pauline Bluck, the Information Commissioner and Epsom & St Helier University NHS Trust and Lewis v Secretary of State for Health [2008] EWHC 2196.⁴⁰

In a world in which genomic data will live on longer the individual, to whom children are related and identifiable by their genomes, and for which the uses are not yet clear, we believe ethical considerations could be made for data use and sharing beyond death.

7. Plans for Protecting Privacy Today and Predictive Technology?

The outcomes from data used predictively based on algorithms suggesting a combination of factors and predicting likelihood, does not mean that a child will, for example, commit a crime, play truant, or become an underage parent. The reliance on risk factors could easily switch from seeing children 'at risk' who need welfare care and safeguarding, to 'at risk of becoming a burden to the State'.

This discussion is elegantly outlined by Anderson, R; Brown, I; Clayton, R; Dowty, T; Korff, D; Munro, E; in 'Children's Databases - Safety and Privacy a report by the The Foundation for Information Policy Research (FIPR) for the Information Commissioner's Office' in 2006.

"One of the main issues identified ... is the shift in meaning of the term "at risk" as used in work with children, from "at risk of significant harm or neglect" to "at risk from failing to achieve the government's five targets for children" and "at risk of social exclusion". If the purpose of data collection, processing and sharing is defined as "protecting children at risk" in these very broad senses, then clearly this shift in meaning leads to a major widening of the "specified purpose" for which the data are processed. The question then arises whether the wider purposes are still sufficiently specific in terms of the DPA1998."

A case study example in the Database State, 2009, Professor Ian Brown, Ross Anderson, Terri Dowty et al in 2008 and in 'Stephen's case study'⁴¹ shows how a lifetime of labelling can have an adverse affect. Further, providers store schoolchildren's biometric data⁴² which needs broad ethical consideration.

³⁸ http://eprints.lse.ac.uk/62276/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_Livingstone,%20S_Childrens%20rights%20online_Livingstone_Childrens%20rights%20online_2015.pdf Livingstone, Sonia and O'Neill, Brian (2014) Children's rights online: challenges, dilemmas and emerging directions

³⁹ http://www.publichealth.hscni.net/sites/default/files/good-mamagement-good-records_0.pdf

⁴⁰ <https://www.dhsspsni.gov.uk/articles/common-law-duty-confidentiality>

⁴¹ A report commissioned by the Joseph Rowntree Reform Trust Ltd to map the main central UK government databases. <http://www.jrrt.org.uk/sites/jrrt.org.uk/files/documents/database-state.pdf>

⁴² https://www.bigbrotherwatch.org.uk/files/reports/Biometrics_final.pdf

8. The Data Protection Act in practice: Fair Processing

“A key guiding principle of the open policy making process was that the DPA 1998 should not be weakened.” [Consultation paper.⁴³]

The principles of the Data Protection Act 1998 appear selectively included in the consultation. Principle 1: fairness is required across all six of these data sharing strands.

Public bodies have a legal duty which was reiterated by the CJEU in 2015⁴⁴, to ensure fair processing before sharing personal data with another public body.

Once it has been established that a data controller does have the “lawful” power to share personal data it would then need to satisfy a Schedule 2 condition for processing and where sensitive personal data is involved, a Schedule 3 condition. It should be remembered though that even where a condition or conditions for processing can be met this will not on its own ensure that the processing is fair or lawful. These issues need to be considered separately.

The organisation should make it clear to individuals about how their information is being used and where they can find out more about the processing and/or object to the processing (the latter point covering s10 of the DPA).

It is also important to ensure that the other Data Protection principles are complied with eg the information shared needs to be relevant and not excessive, it must be accurate and kept up to date, not kept for longer than necessary and kept secure. Existing government databases do not meet these criteria, and we should be pleased to see this consultation take the opportunity to move to better datasharing across the board as an investment in ethical and engaged public involvement.

9a. Increased Datasharing for Debt

Creating a “single view of debtors”, as discussed in the consultation discussions, requires a broader strategy on public debt management. Simply enabling the remaining 10% of debt owed to HMRC and DWP (the consultation impact assessment⁴⁵ itself states on page 6 that “there are already sufficient data sharing powers for data to be shared between HMRC and DWP which covers around 90% of the £24bn.” On page 9 it appears to read that the 10% not covered by existing datasharing agreements is only £240 million.

Debt was brought back it appears hurriedly, into the 2016 discussions having been previously discussed and dropped, so there was little proper discussion as part of the process. However the business case is unclear and any framework of change management how it might be implemented, as well as safeguards for those who will be most impacted, defining “who cannot pay, and who will not pay”, are missing. The ethical implications of automated targeting must also be clarified here.

A ‘single view of debt’ may indirectly disproportionately negatively affect children as is suggested did the single view of welfare payments, Universal Credit, and since it is potentially likely this

⁴³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final__3_.pdf page 6 item 17

⁴⁴ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150110en.pdf>

⁴⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504023/Consultation_Stage_Impact_Assessment_for_Debt_power.pdf

'single view' would be outsourced to a central service⁴⁶ [Consultation, page 13, item 43], it is also potentially likely this 'single view' would not sufficiently take into account the personal factors and structural obstacles of individuals' lives⁴⁷ that face-to-face consensual discussion and agreement to data sharing can facilitate.

While the paper outlines the concept that people experiencing genuine difficulties can be offered the right support, and a managed payment plan can be tailored to take their personal circumstances into account, we are unable to see why existing arrangements (remembering they already cover an estimated 90% of datasharing requirements according to the Consultation Impact analysis) do not already enable this or how changes would positively impact what is done today in practice.

We would suggest it beneficial to seek separate inclusive discussion with third sector organisations most familiar with this specialist area return to the table rather than the proposal put back in again after they left when debt proposals had been taken out from discussions.

9b. Health data

Health data was explicitly excluded from the open policy making discussions and consultation. "Health and care data is particularly sensitive and rightly needs additional protections."

However not all health and social care data is held within healthcare organisations and some therefore will nonetheless potentially be more widely shared as a result of this proposed legislation. For example data types such as Special Needs and Types of Disability held on individuals in schools data at local and regional level and within the individual PLASC-type extractions of school data, and its linked master collection in the National Pupil Database.

It is a pity that the review by National Data Guardian, Dame Fiona Caldicott has been inexplicably delayed given that its expertise and recommendations would be helpful to understand and address consistency for similar data, stored in other silos, which may be shared as a result of this legislation.

It is also worth noting the health mention in the Civil Registration Information Impact Assessment:⁴⁸

"Information supplied could also benefit wider society in terms of providing data to deal with ad-hoc situations such as flu pandemics where there is currently no gateway in place to provide the information."

Temporary population-wide needs for data sharing in scenarios such as pandemics have procedures in place already in Section 60 of the Health and Social Care Act 2001 as re-enacted by Section 251, NHS Act 2006.⁴⁹

⁴⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final_3_.pdf

⁴⁷ http://www.welfareconditionality.ac.uk/wp-content/uploads/2014/09/Briefing_LoneParents_14.09.10_FINAL.pdf - S. Johnsen, (2014) Conditionality Briefing: Lone Parents

⁴⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/504025/Consultation_Stage_Impact_Assessment_for_Civil_Registration_power.pdf

⁴⁹ <http://www.hra.nhs.uk/documents/2014/02/cag-frequently-asked-questions-1.pdf>

9c. Considerations specific to 'Troubled Families' datasharing

There is already extensive legislation⁵⁰ used in sharing data under the 'troubled families' banner and it reportedly comes with differing degrees of transparency to the people involved. The August 2015 privacy notice⁵¹ for Troubled Families suggests that these data are already extracted together with control families' data for research purposes. Further, for example, Information can be shared with police forces under section 115 of the Crime and Disorder Act.⁵² Therefore it is unclear why they need be included as Prescribed Persons / Public bodies on the new legislation.

There is also evidence that suggests every family included in the programme was turned around.

*"CLG told Manchester that it had precisely 2,385 troubled families, and that it was expected to find them and "turn them around"; in return, it would be paid £4,000 per family for doing so. Amazingly, Manchester did precisely that. Ditto Leeds. And Liverpool. And so on."*⁵³

Given the evidence⁵⁴ that every family approached has been 'turned around', not one objected or slipped through the net, then it would appear the programme is entirely consensual. Why then datasharing legislation to enable non-consensual datasharing is required, is unclear.

Why data processing must sometimes 'necessarily be carried out without the explicit consent of the data subject being sought' so as not to prejudice the provision of that counselling, advice, support or other service, or for purposes of identifying fraud, is understandable. It is less clear how this applies to families with whom services intend to have direct interaction, which is consensual.

Where consent is not given⁵⁵, data should not be shared. This was the view given by the ICO in the past, *"we dislike is where "consent" is sought, it is refused but the data controller goes ahead anyway. That does not fit with how we view consent nor does it meet the Act's fair processing requirements."* And the duty of confidence and consent both have important considerations in the rights of the individuals involved to be respected, and transparency about data sharing.⁵⁶

Although health data sharing is in itself outside of this consultation, one can look to its treatment of personal data and consent as an area with long established models of accepted practice.

The common law of confidentiality appears currently unfashionable but perhaps is the simplest and most effective principle to consider public expectations with a question: is information I give in confidence, kept in confidence? Children should be able to move into adulthood free from historical data labels. The 2009 Government document: Information Sharing: Further Guidance on Legal Issues⁵⁷ is very clear on the common law duty of confidentiality.

⁵⁰ such as existing legislation SI 417 (2000)

⁵¹ http://defenddigitalme.com/wp-content/uploads/2016/04/Privacy_notice_for_the_evaluation_of_the_Troubled_Families_programme.pdf

⁵² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11469/2117840.pdf

⁵³ [http://www.niesr.ac.uk/blog/troubling-attitude-statistics-cross-reference-Stephen-Crossley-A-kind-of-Trouble-\(2015\)](http://www.niesr.ac.uk/blog/troubling-attitude-statistics-cross-reference-Stephen-Crossley-A-kind-of-Trouble-(2015))
<https://akindoftrouble.wordpress.com/2015/03/13/the-troubled-families-programme-the-perfect-social-policy/>

⁵⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/410715/Final_The_Benefits_of_the_Troubled_Families_Programme_to_the_Taxpayer.pdf

⁵⁵ https://khub.net/c/document_library/get_file?uuid=adbd557e-5082-48a3-b915-8ed16273ba72&groupId=5404774 a past view of the ICO on consent in the Troubled Families programme

⁵⁶ <https://ico.org.uk/media/1424185/webinar-questions-with-ico-and-dclg-responses-20150423.pdf>

⁵⁷ http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/eOrderingDownload/Info-Sharing_legal-issues.pdf

As advancing technology permits wider data sharing of more data with less effort, and collections of data are getting ever larger and 'too big to ask' it is often easy to forget that for the individual it is still about them, their data, and bulk data sharing has impacts on individual lives.

Technologies that have become able to assess massive amounts of data in short time frames permit ever greater predictive uses of data and the consultation and legislation has not addressed data for the future but rather datasharing as participants are familiar with today.

*"Predictive algorithms increasingly manifest as a force-of which cannot be restrained by invoking privacy or data protection."*⁵⁸

There are several considerations which I can only touch on here. More expert contributors in cyber security and children's data, should be asked to inform the legislation on this:

- Predictive uses of data are indirect secondary use of data
- Punitive uses of algorithm attributed decisions can be harder to challenge than a person attributable decision 'because the system says so' when both the data user and data subject cannot see inside, nor review all the data on which a decision may have been based.
- Punitive outcomes may occur through exclusion too, rather than directly from authoritarian use.

For children all of these mean a shift in power which is already imbalanced due to the nature of adult child relationships. Decisions made about them without them are contrary to the UN Convention on the Rights of the Child.

How predictive technology is likely to warp future face-to-face interactions i.e. the frontline interactions of services and people is of concern while it is in use but poorly understood by both users and the people whose data are being used by them.

"Under the emerging regime of big data there is little enforceable in the idea of consent. Moreover, the notion of fair processing is completely obfuscated by the scale and nature of the algorithms being used." [D.McQuillan, 2016]

However automated decision making has particular data protection legal requirements⁵⁹ that this consultation and its code of practice should take into consideration.

Steps must be taken to safeguard where decisions are automated:

- the legitimate interests of the individual, such as allowing them to appeal the decision.
- against risks as result of decision making driven by financial targets^{60 61}
- for users of the data, ensuring when decisions are based on an algorithm, we still trust experience

What might be considered as using data for an individual's benefit, is often determined through using massive amounts of data on speculation 'to see if someone qualifies'. These uses of data in health are however not considered direct, but secondary, indirect uses of data: Risk stratification.

"Examples of activities would be risk prediction and stratification, service evaluation, needs assessment, financial audit."⁶²

⁵⁸ <http://research.gold.ac.uk/11079/1/mcquillan-algorithmic-states-of-exception.pdf> McQuillan, D (2015, forthcoming) 'Algorithmic States of Exception', European Journal of Cultural Studies, Vol 18, No 4-5, ISSN 1367-5494

⁵⁹ <https://ico.org.uk/for-organisations/guide-to-data-protection/principle-6-rights/automated-decision-taking/>

⁶⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11469/2117840.pdf

⁶¹ <http://www.niesr.ac.uk/blog/troubling-attitude-statistics>

⁶² <http://www.hscic.gov.uk/article/3638/Personal-data-access-FAQs>

And as in health for example, a lawful basis for the processing of data for these reasons where the data is for the purposes of direct care is where consent has been gained. The workaround relied on increasingly in the last five years, section 251 support for the relevant purposes, is problematic. It is a workaround, to avoid consent, designed for temporary emergencies like pandemics, it has become increasingly relied on for standard bulk data transfers seen as 'too big' to ask for consent.

Therein lies much of today's challenge to the rights of the individual. "We can't ask everyone," for consent in a massive study. At this point we again draw on the fact that these bulk datasets are made up of individuals data and on the public engagement work referenced earlier from the ESRC and ONS, the Royal Statistical Society on broad administrative data, and also most recently by Wellcome on health administrative data. Not everyone wants to opt out but most want asked. The research suggests that there is some increased sensitivity to health data sharing, there is a significant population of 17% who does not want their personal data shared without consent in any secondary non-direct care circumstances. Data shared at individual level, consent is possible to manage.⁶³

The Wellcome report 2016⁶⁴, A One-Way Mirror: Public attitudes to commercial access to health data found: *"that in order to have a trusted system for patient data use it is absolutely crucial that there is honest and open communication and engagement with the public about how their health data could be used for purposes beyond their care, and what safeguards are in place."*⁶⁵

What efforts are being made for these communications to happen across public data?

10. Direct service does not imply indirect uses of data by default or forever

Across the indirect uses of data, an important principle is missing from the legislation and code of practice consultation discussion and written statements:

Direct service must be possible without implied secondary uses being a requirement. How will this be communicated to individuals, that they can use a public service without being required to consent to other uses of data?

Coercive consent is invalid as by its nature, consent is an agreement. Users also have a right to be informed that even if agreeing to a direct service they are not compelled to consent to data sharing with service B in order to be eligible for the provision of service A.

Simply by agreeing that data should be shared for the purpose of obtaining a driver's licence should not by default mean research uses of my personal data are a requirement. This is a longstanding principle of health data management until recently, when coercive use was attempted in 2013 in the care.data programme, based on the thinking 'no one who uses a service should be able to opt out'.

Communications will be important if the provision of fair processing information to the individuals is involved, with more information being required where the data sharing is more extensive and taking into account the added requirements for automated processing.

Consent must also be revocable. There must also be practicable ways to revoke consent once given, for example in research today, at any future date.

⁶³ <http://www.hscic.gov.uk/catalogue/PUB20527/exp-care-info-choi-eng-ccg-apr-2016.pdf>

⁶⁴ http://www.wellcome.ac.uk/stellent/groups/corporatesite/@msh_grants/documents/web_document/wtp060244.pdf

⁶⁵ <http://www.wellcome.ac.uk/News/Media-office/Press-releases/2016/WTP060240.htm>

11. Specified consultation questions

Question 2. Are there any public authorities that you consider would not fit under this definition?

and

Question three: Should non public sector bodies (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the public service delivery power?

The definition of public authority determines the criteria for which bodies can be added to the Schedule. It is intended to be broad enough to encompass all relevant public authorities. To achieve this the legislation defines a public authority as 'a person who exercises functions of a public nature'.

Should Father Christmas be added to the nice or the naughty list, is not a question we want this consultation to ask, yet the clause in subsection 3 proposes "a person who exercises functions of a public nature" - a definition so broad, that any person working for a local authority, indeed temporary Christmas staff, might be considered suitable to add to the list of Prescribed Persons by this standard.

It is this open definition which enables the legislation to stay flexible as needs change over time. It is the same openness that since 2012 allowed the Department for Education to hand out children's identifiable personal data from the National Pupil Database to data recipients considered suitable 'prescribed persons' that may meet legal requirements, but far exceed fair and reasonable public expectations today; namely journalists, charities and commercial companies.

The questions asked numerous times in the consultation discussion which did not get satisfactory answers to, included how private companies providing State services will be entitled to personal data they would not otherwise come into possession of, and what Chinese Walls will be sufficient safeguards within a firm in which one arm performs a public service but is also a for-profit player or offers punitive services. Key areas include Education, Prisons and Youth Offender Services.

A guiding principle of the policy making is that the uses of data are not to be punitive. How will the legislation ensure this stays the case when every police force is included on the list of specified public authorities for the public services data, Companies such as G4S, Serco, in punitive service delivery, also provide the services which will be seen as 'tailoring public service delivery'?

The current Code of Practice on principles for use of the power does not appear to address these risks or clearly exclude use with punitive or for-profit measures.

Question 4. Are these the correct principles that should be set out in the Code of Practice for this power?

A Department of Energy and Climate Change (DECC) proposal for data sharing to provide direct assistance to citizens living in fuel poverty is included in the package of measures, which was not part of the open policy process.⁶⁶ [p5, item 14a]

⁶⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final__3_.pdf

We were given to understand that the process would be similar as to now, an annual date on which the Warm Home Discount (WHD) scheme assessment would be made and the information shared with the energy companies.

We would welcome that this measure may benefit “low income citizens of working age and families with children.”

Two concerns are however unaddressed in the consultation.

The first is the assumption that the energy provider of the individual will be unknown by the state. Item 49 in the consultation suggests that the new power would “allow these data sets to be matched together within Government to identify the priority customers.” We assume however that this does not identify which energy company, which customer is with. So it is likely that the identifying information, and flag of eligibility will be shared with 37 companies⁶⁷ or an unknown number in future across the UK, all but one of whom have no need to know, but would receive the individual’s name, contact details and eligibility flag anyway. We are not sure how this disclosure will be justified given that it is neither necessary or proportionate.

Safeguards that prevent the energy companies then targeting a known vulnerable group, with marketing for example, would need to be specific as the consultation only defines purposes as “citizens being offered a service which aims to improve their wellbeing” and “the provision of assistance to citizens living in fuel poverty.” The question asked includes the WHD “alongside information about energy efficiency support”. We wonder how broad in time and content this is.

The second is to understand what safeguard is in place for the change to be in the best interest of the recipient, rather than the company, or indeed fuel poverty assistance paid for by the State. For example, today on a given annual date (we were told in July) those pensioners who qualify for the WHD rebate are automatically flagged to providers. Once you reach pensionable age you keep the status of pensioner.

The key difference that contrasts with those in a position of qualifying for a rebate based on welfare grounds, is that this status, unlike becoming a pensioner, can change.

If the means/qualifying test is intended to be carried out more frequently running up to winter, and automatically flagged by the system if no longer qualifying, it needs more safeguards than if annual.

Safeguards for when identification impacted the start and stoppage of the qualification for the energy rebate would be important to have in place, if the intent is to improve the welfare of the individual and not to simply identify the minimum number of individuals who qualify in real-time as opposed to over time, given the latter is a better measure of need.

Question 15. Fees should not be charged by public authorities for providing data for research purposes.

Public opinion is clear that any data transfers for which payments are made, is seen as selling. There is strong opposition to selling our personal data which make up public administrative data.

While we understand that costs are incurred in aggregating and cleaning work in order to prepare data for using in a range of formats, including as Open Data, the public benefit should outweigh the

⁶⁷ <http://switch.which.co.uk/energy-suppliers/suppliers-atoz.html>

cost and the cost will act as a barrier to access. Any fees charged already today as cost recouping, should ensure public interest research projects are not disadvantaged by commercial companies.

However this should not mean that the data could be repacked and sold, or the taxpayer is subsidising private gain. Referring again to the public engagement work since 2013 included in this submission, public interest research has wide support. For-profit uses do not.

Indirect or hidden costs, such as DBA checks recently imposed at the Department for Education for academics using data, should be taken into account as well.

Question 16. Rejected applications with the reasons as well as accepted applications for research purposes should be published.

Public transparency supports trust and professional accountability for the approvals panel and for the applicants. It may also foster discussion for any rejections in other data users or applicants. In the past year only three applications have been rejected to the best of my knowledge for ADRN access. It is our belief that transparency is key to trust and rejections should be as transparent as acceptance. The organisation name, rather than individual applicant could be used if felt necessary.

----- Forwarded message -----

From: Mallaburn, Peter [REDACTED]
Date: 6 April 2016 at 17:05
Subject: FW: Consultation on better use of data
To: "data-sharing@cabinetoffice.gov.uk" <data-sharing@cabinetoffice.gov.uk>

UCL Energy Institute welcomes the opportunity to respond to the consultation on better use of data. The Institute is one of the UK's leading centres of research on energy systems and demand. We also host the Research Councils UK Centre for Energy Epidemiology, a £5.3m initiative that which is developing a definitive evidence and base to underpin and inform government policy to reduce greenhouse gas emissions. Access to publicly-collected energy and climate data is therefore at the heart of what we do.

We do not have any specific comment to make on the questions posed in the consultation document. However we do want to wholeheartedly support the principle that researchers and policymakers have access to reliable, timely data on how much energy we use, both now and in the past. Climate change mitigation relies fundamentally on managing demand for energy, and to do that we to understand how energy is used in our homes and workplaces, and also how managing our use of energy could affect other aspects of our lives, such as health and welfare.

We would be happy to work with you on any aspect of the consultation should this be useful. I have attached a short policy paper that explains our position in a bit more detail.

Please could you acknowledge see receipt of this response.

Best wishes,

Dr. Peter Mallaburn
Director, Policy and Governance
UCL Energy Institute

University College London | Central House | 14 Upper Woburn Place | London | WC1H 0NN
[REDACTED]

Getting to grips with energy efficiency data

UCL Energy Institute and Institute for Sustainable Resources

May 2015

Introduction

The UK has taken the first tentative steps on the road to a low carbon economy. Last year UK carbon emissions fell by almost 10%¹, continuing a trend that has seen emissions fall by 30% in the last 25 years.

It's a good start, but there's a long way to go. To meet our climate target we have to cut emissions in half again in the next 25 years. However our progress so far has come, mainly, from switching to lower carbon fuels and easy energy efficiency; the "low hanging fruit".

The next stage involves big changes in our behaviour and lifestyle, in the way we build and run our homes and offices, and by the way we interact with the technologies we use. Getting this right will pay big dividends in energy cost savings for companies and householders and new jobs and business opportunities for the UK plc.

But, as a country, we must avoid getting it wrong. A low carbon UK means switching hundreds of £billions away from high carbon and into low carbon technologies. The wrong policies, or the right policies working in the wrong way, could waste millions and set us back years.

The Problem

"You can't manage what you don't measure", so to manage our energy use properly we need robust data on how much energy we use, and how much this has changed over time, and how it might change in the future.

But at the moment we know as much about key aspects of our energy use as we do about the bottom of the deep ocean. Some examples:

- Some data could easily be available, but requires ministerial action to make its collection universal and mandatory, such as energy performance data in commercial buildings.
- Some data is simply missing or way out of date. Policy on commercial properties – shops, offices, public buildings – is based on 25-year-old data.
- Some data is plain wrong: recent DECC studies at UCL and elsewhere have shown that our solid walled houses lose much less heat than we thought².
- Some data is collected by processes that are known to be flawed – Energy Performance Certificates (EPCs) for households, and certification data on Green Deal measures³.

¹ 2014 UK Greenhouse Gas Emissions, Provisional Figures. DECC, March 26th 2015.

² Solid-wall U-values: heat flux measurements compared with standard assumptions. BRI 43, 238–252.

³ Green Deal Assessment Mystery Shopping Research, DECC, December 2014

- Some data we need but can't have: data collected by utilities and large companies is commercially sensitive and is not available for analysis. Some data is collected by researchers, who can't publish it because it's protected.
- Some data has been collected by Government but then privatised so that even Government no longer has easy access to it – e.g. EPC and Display Energy Certificate data.
- And some data that we do have is at risk: the government is thinking about scaling back on nationwide data surveys on housing and public buildings.

And the problem isn't restricted to existing data. The government is spending £10bn on installing 30m smart meters in our homes and businesses, with the roll-out due to start next year. This has the potential to revolutionise our understanding of how we use and manage energy. But there is currently no mechanism for smart meter data in the UK to be utilized for research purposes or the public good.

Our understanding of energy use is in such a state that we cannot be sure if existing policies are working or if policies that are under consideration might work in the future. This is deeply worrying, given the costs involved and the impact on our lives.

The Solution

Other big public policy areas – social care, health, the elderly – all have centrally-managed data strategies. Energy efficiency, which is comparable in scale and far more complex – does not.

To sort this out we at UCL believe that we need nothing short of an energy policy data revolution. We think four things must happen now.

First we need a data map.

Energy efficiency data is fragmented, with key datasets split between at least 12 bodies – 3 Whitehall departments, the Valuation Office, the Research Councils, the EU, the Carbon Trust and the Energy Saving Trust and the energy utilities.

Some good progress has been made. Government datasets are increasingly being used for research and to inform policy. The establishment of the Centre for Energy Epidemiology at UCL shows the government and the Research Council's commitment to collecting, storing, analysing and reporting data.

More widely the Open Data institute, supported by InnovateUK, is researching new approaches to data disclosure. The government is also sponsoring the "Driving Bigger, Better Operational Energy Use Data" project to find new ways of managing and sharing energy and related data. These initiatives give us a firm foundation upon which a comprehensive data map could be built.

Second we need a data plan.

The UK is unique in that it has a 2050 climate change target and a sensible system of carbon budgets designed to get us there.

Once we have a data map we need a plan that matches the data available to the policies the government is putting or might consider putting into place. A key component of the plan must be a programme of ongoing research that can test the quality of the data and provide the analyses that will be essential to turning data into useful information and evidence upon which policies can be based. Both targeted and exploratory research are needed to provide the greatest value from the data and to ensure that data and performance gaps are highlighted.

Third, we need a open discussion on data protection and ethics.

Ethical questions arise when we collect and analyse household data, and when we report the results of these analyses. This is right and proper.

However, there is a national ethical perspective, which properly requires us to make best use of available data to benefit the nation as a whole and especially those in vulnerable sectors of the community such the fuel poor. If urgently needed performance benchmarks can be derived, and incentives for energy reduction created, by disclosure of energy data from certain classes of buildings and facilities, then is it ethical to leave this data undisclosed?

Ethics committees governing energy data should be empowered to consider a wide range of ethical issues with respect to data – as is already the case for health data.

And finally we need leadership from government.

Getting the right energy efficiency data together is going to involve banging heads together to deal with vested interests and silo mentalities. Only government can do that.

Also the success or failure of government policy (and the reputation of the new Ministers) depends on access to good data, so it is in government's interest to sort this out before it makes any expensive or irreversible mistakes.

Some quick wins could be achieved by following through on existing government research and by some smart adjustments to existing policies which could harvest useful contemporary data and information.

But, overall, we believe that the government should commission the Committee on Climate Change to write a review of UK energy efficiency data needs to deliver the 2050 target and to make recommendations, which should form the basis of a future White paper.

Merseyside Fire and Rescue Service

Cabinet Office - Better use of data – consultation paper

	Question	MFRS Response
	<u>Improving public service delivery</u>	
1	Are there any objectives that you believe should be included in this power that would <i>not meet</i> these criteria?	The stated criteria, as detailed below, appear to cover all potential objectives for information sharing. ie <ul style="list-style-type: none"> a) <i>the improvement or targeting of a public service provided to individuals of a particular description, or</i> b) <i>the facilitation of the provision of a benefit (whether or not financial) to individuals of a particular description, and</i> c) <i>the improvement of the well-being of individuals.</i>
2	Are there any public authorities that you consider would not fit under this definition?	No, all public authorities should fit the stated definition of "a person who exercises functions of a public nature"
3	Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?	Yes, it would be short sighted and limit the benefits of information sharing if this type of body was excluded.
4	Are these the correct principles that should be set out in the Code of Practice for this power?	Yes, the stated principles as set out below are appropriate. Government may want to consider including a requirement for public authorities to publish their policies on data security to support this process. <ul style="list-style-type: none"> a) <i>Principles for use of the power. This would include details on when the power is intended to be used;</i> b) <i>Guidance for successful implementation. This would include details such as what a business case for data sharing under the power should cover and best practice examples; and</i> c) <i>Additional safeguards. This would include details of additional safeguards, such as the requirement to publish Privacy Impact Assessments. These supplement the safeguards which have been built into the in the power itself (such as the permissive nature of the power) as well as those in existing legislation, such as the DPA.</i>

	<u>Providing assistance to citizens living in fuel poverty</u>	
5	Should the Government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?	Yes
6	Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?	Yes, but much more could be done. See the response to 7 below.
7	Are there other forms of fuel poverty assistance for citizens that should be considered for inclusion in the proposed power?	Yes, This seems to be a narrow view of the value of sharing what would be valuable information. Thought should be given to the potential use of this information by health sector organisations and the fire and rescue service; as people who suffer from fuel poverty are often vulnerable in other ways. They are at more risk of fires in the home and of dying in those fires. They will also be at more risk of underlying health issues; which puts their overall well-being at risk. Sharing this type of information with other public sector bodies such as fire and rescue services would allow them to target their prevention activities more effectively and help reduce fires, injuries and fatalities.
	<u>Access to civil registration to improve public service delivery</u>	
8	Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?	Yes
9	Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?	Yes
	<u>Combating fraud against the public sector through faster and simpler</u>	

	<u>access to data</u>	
10	Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?	We have no comments on this question
11	It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the Fraud gateway be operational for before it is reviewed?	We have no comments on this question
	<u>Improving access to data to enable better management of debt owed to the public sector</u>	
12	Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?	A range of public and voluntary sector partners should be consulted to ascertain factors that make individuals vulnerable and those factors should be considered consistently when making decisions on how debts are pursued. For example, what physical or mental health issues does and individual have; or would pursuing the repayment of multiple debts at the same time have an impact on the individual's ability to feed themselves, or heat their homes safely – thus having a knock on effect for other agencies such as the NHS or fire and rescue service.
13	How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?	As with the response above, the Government should consider the broadest implications of pursuing multiple debts and engage with a wide range of partners at an early stage and during the pilot process, to ensure that the direct and indirect impacts of pursuing debt are scrutinised.
14	It is proposed that the power to improve access to information by public authorities for the purpose of better managing debt owed to government will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long	We have no comments on this question

	should the debt power be operational for before it is reviewed?	
	<u>Access to data which must be linked and de-identified using defined processes for research purposes</u>	
15	Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?	Yes, fees should be charged and they should reflect the cost to Government of carrying out the Trusted Third Party process. Most of the researchers requesting access to data will be from academic institutions that have budgets for such research work.
16	To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?	This could be useful to ensure that only those displaying the highest standard of research procedures gain access to information through this channel.
17	What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?	We agree with the examples already given: <ul style="list-style-type: none"> • <i>Informing the public about social and economic matters</i> • <i>Assisting in the development and evaluation of public policy; with the addition of;</i> • Research that contributes to improving health and wellbeing
	<u>Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research</u>	
18	Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?	This seems reasonable.
19	If your business has provided a survey return to the ONS in the past we would welcome your views on: the administration burden experienced and the costs incurred in completing the survey, and ways in which the UK Statistics Authority	Not applicable

	should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics.	
20	What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to processes that collect, store, organise or retrieve data	All the Data Protection principals, data quality and standards to ensure consistency across organisations.



OPTICAL CONFEDERATION & LOCSU

RESPONSE

BETTER USE OF DATA CONSULTATION

The Optical Confederation represents the community eye health sector including 12,000 optometrists, 6000 dispensing opticians, 7000 optical businesses and 45,000 ancillary staff in the UK, all of whom provide high quality and accessible eye care services to the public on behalf of the National Health Service. The Optical Confederation articulates their views to government and supports members through services and solutions.

The Local Optical Committee Support Unit (LOCSU) provides quality, practical support to Local Optical Committees (LOCs) in England to help them to develop, negotiate and implement local objectives in respect of primary ophthalmic services.

The eye health sector is comprised of optical practices of varying sizes ranging from national and international high street and supermarket brands, regional and family companies, to mobile domiciliary providers and individual opticians

The Optical Confederation and LOCSU support the “delivery of targeted improvements for individuals and businesses...reducing burdens on businesses and improving the protection of data and the provision of public services” (*paragraph 3, page 1*). We believe that in addition to the delivery of public services and better decision making, the proposals will and must also support the better delivery of public health.

We agree with the Cabinet Office that “Health and care data play a critical role in the design and delivery of public services and improved outcomes for citizens” (*paragraph 28, page 8*). However owing to the sensitivity of the data, we support the point that its inclusion within proposals must involve additional safeguards which conform to recommendations outlined in the Caldicott review (*paragraph 28, page 8*). We are willing to work with Cabinet Office and Department of Health officials on any integration of health and care into proposed legislation. However a requirement is that such incorporation should not place new and unnecessary financial and administrative burdens on the eye health sector.

We welcome assurances that with the open policy process the Data Protection Act (DPA) 1998 will not be weakened (*paragraph 17, page 6*), and that all the proposals are aligned to "Data Protection Principles" (Schedule 1, DPA). We further welcome the express provision that information cannot be disclosed if it contravenes the DPA, or is prohibited by the Regulation of Investigatory Powers Act 2000 (Part1) (*paragraph 72, page 20*).

We note that it is proposed that there may be limited circumstances when information may be used more widely than the original purpose (*paragraph 38, page 11*). We are concerned about this possibility. There must be absolute clarity about when and how such data will be used.

Improving Public Service Delivery

1. Are there any objectives that you believe should be included in this power that would *not meet* these criteria?

- *No*

2. Are there any public authorities that you consider would not fit under this definition?

- *Yes. The proposed definition "a person who exercises functions of a public nature" should be adopted. Therefore any body which is not fulfilling a public service function would not fit under the definition.*

3. Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

- *Yes.*

4. Are these the correct principles that should be set out in the Code of Practice for this power?

- *Yes, but with a number of caveats. The Guidance will be helpful if it outlines potential shortcomings/pitfalls which should be avoided in the development of a business case for data sharing. A principle for how disputes will be handled needs to also be included.*

Providing Assistance to Citizens Living in Fuel Poverty

5. Should the Government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

- *Yes, as sometimes the most vulnerable are the ones least likely to step forward to get available or necessary assistance. As an example those who are visually impaired should be assisted as much as is possible, and if this is best achieved through data sharing, we are supportive.*

6. Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

- *We have no view*

7. Are there other forms of fuel poverty assistance for citizens that should be considered for inclusion in the proposed power?

- *We have no expertise here.*

Access to Civil Registration to Improve Public Service Delivery

8. Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

- *Yes, provided that use of this access is restricted to its core purpose; i.e. providing a service.*

9. Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

- *Yes, provided that this sharing is restricted to the core purpose; i.e. information updating and by extension service accuracy and efficiency on the part of public authorities.*

Combating Fraud against the Public Sector through Faster and Simpler Access to Data

10. Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

- *The proposals are sensible and have our support. However we believe that no system is without flaw and from time to time will breakdown. On these occasions the proposals must include the right of appeal if things go wrong as a last option, in keeping with fairness and natural justice. Any right of appeal will prevent being caught in perpetual injustice.*

11. It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the Fraud gateway be operational for before it is reviewed?

- *It is not clear, how objective evaluation of the gateway and pilots will be assured/guaranteed. This evaluation is a critical determinant as to the appropriate time for a Ministerial review.*

There is a need for greater clarity as to the exact information which is to be shared by organisations, and where the boundaries are for such sharing. The type and exact information which can be shared will determine how onerous its provision/sharing will be and this will have to be factored into the operational time for the fraud gateway before it is reviewed.

Improving Access to Data to Enable Better Management of Debt owed to the Public Sector

12. Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?

- *The government should engage with healthcare providers and representative organisations. We would wish to be assured that when taking action on multiple debts to government, this action does not inhibit an individual's access to healthcare. A practitioner should still be able to provide service to someone in need, irrespective of that provider's debt status.*
- *In the case of the eye health sector, the government should work with the Optical Confederation and LOCSU.*

13. How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

- *Scrutiny should be undertaken by a steering group comprising government representatives, industry experts and representative organisations such as the Optical Confederation and LOCSU. This will afford in-depth and objective analysis of both the design of the pilots and their delivery of outcomes and benefits.*

14. It is proposed that the power to improve access to information by public authorities for the purpose of better managing debt owed to government will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the debt power be operational for before it is reviewed?

- *It is not clear, how objective evaluation of the pilots will be assured/guaranteed (Note recommendation- 11). This evaluation is a critical determinant as to the appropriate time for a Ministerial review. However 3-5 years is considered reasonable.*

Access to Data which must be Linked and De-identified using Defined Processes for Research Purposes

15. Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

- *Yes, provided that it is on a cost recovery basis. Production or making available data requires resource utilisation by optical sector organisations. This is especially burdensome in the case of small organisations acting as or on behalf of public authorities (eg the Minor Eye Conditions Service MECS enables optometrists to accept referrals from GPs for patients with eye problems). We would be very concerned if fees did not reflect the financial and administrative burdens on public authorities associated with data provision and sharing.*

We would not oppose a maximum fee provided it is justifiably reasonable.

16. To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

- *Yes.*

17. What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

A health and wellbeing criteria should be used to determine public benefit.

Access by UK Statistics Authority to Identified Data for the Purpose of Producing Official Statistics and Research

18. Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

- *We have no view.*

19. If your business has provided a survey return to the ONS in the past we would welcome your views on:-

- a) the administration burden experienced and the costs incurred in completing the survey, and
- b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics.

- *N/A*

20. What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to processes that collect, store, organise or retrieve data?

- *The Code should be sensitive to the nature of the industry to be impacted. It should have criteria that are flexible and can be adapted to the different operating*

circumstances and risks associated with different parts of the eye health sector; i.e. consistency should not be confused with "one size fits all". It is also important to ensure that the Code of Practice works with, rather than duplicates, existing regulatory systems. We would be very concerned if the Code placed new and unnecessary financial and administrative burdens on the eye health sector.

- *There is also no evidence that a move from civil to criminal penalty is justified. Unless the government has proof that justifies this move, we are not supportive of the proposal.*

Better Use of Data – Consultation Paper

Data Sharing Policy Team, Cabinet Office

Response to Consultation

Introduction

Thank you for the opportunity to respond to this Consultation.

This response is not submitted on behalf of the legal firm with which I am associated (Hunton & Williams) or on behalf of any client. I have a long-standing interest in data-sharing and have responded to previous consultation papers on the issue.

The optimum way to approach the sharing of data for the public good raises taxing questions over the balance between the position of the individual and the interests of the State. The thought and work which has gone into the production of the proposal is welcome.

In approaching the Consultation I have set out a number of general points then raised some comments and issues on the specific topics. It has not always been possible to bring the responses or comments under the specific question headings however I have aimed to relate the comments to the relevant parts of the Consultation Paper. In addition I apologise if I have misunderstood parts of the proposal. I think that I have finally understood the various elements but at times found it quite difficult to work out precisely what is envisaged in some places e.g. the reference to the use of APIs.

Overview of proposals

There is a distinct difference between the nature of the proposal as far as it impacts on access for official statistics (page 30 onwards) and the rest of the document. The proposal, as far as the access by the Statistics Authority for the purpose of official statistics is concerned, follows a conventional pattern of data-sharing disclosure. A specific request will be made and the relevant public authority will have a case-by-case discretion to make the disclosures requested. In the event that there is a difference of view the Statistics Authority can exercise a power to require information. Such a formal request could, no doubt, be challenged if appropriate. In relation to notices to undertakings the powers are also constrained. In addition the data which would be disclosed will not be used to impact any individual. For these reasons this aspect of the proposal appears to be an appropriate and necessary updating of the relevant legislation and I have only limited comments in relation to it.

In relation to many other aspects of the proposal however the process is not nearly as clear. It appears that the entity making the disclosures will, in reality, not be exercising any discretion in

an individual case but will be providing another public body with a general access to its data via electronic means. In such arrangements there will be no specific exercise of a discretion to disclose. The body making the disclosures may not be aware of any specific disclosures (there appear to be no requirements for audit trails or annual audits or reports on the numbers of disclosures made etc..) and will not be able to challenge the decision of the accessing authority to access the data in an individual case. These proposals are actually proposals for wide electronic access to data held across the public sector by other public bodies. Irrespective of whether this is desirable or not it would have been helpful to have this made more explicit than it was. It may have been my obtuseness but it took me several reads of the Consultation Paper to recognise the nature of the actual proposal.

Paragraphs 8 to 33 (note that there are two sets of 13 – 17)

12. It appears from the reference to APIs that it is envisaged that the most usual method of disclosure between public bodies will be “pull” rather than “push”, in other words the requesting body will be given electronic access to systems, apart from the specific provisions about statistical data as described above. If this is correct it would be appropriate to make this more transparent.

15. A brief summary/overview of the HMRC specific measures would have been useful to give a fuller view of the proposed legislation.

17. It is not apparent what is added by the statement that there will be no breach of the DPA. I am struggling to see that it adds anything. In relation to disclosures these would become permitted disclosures under the non-disclosure exemptions and therefore, as a matter of law, the disclosures would not breach the DPA. Perhaps this statement could be explained further.

It is also not apparent why the legislation needs to provide that information prohibited under Part 1 of RIPA is excluded. Such data will be either interception data or communications data. It is difficult to envisage that such data will be held by the relevant public body in datasets relevant to providing or facilitating benefits, civil registration, debt collection or even combatting fraud, or generally useful to the requesting public body for such purposes. Moreover such data is presumably not generally held in accessible datasets, unlike say data on debts, or civil registration data.

It is noted that health and care data will not be included until the report from Dame Fiona Cauldicott is received, and specific provisions may also be made for health data.

18. The proposed new criminal offence of unlawful disclosure would, it is assumed, penalise the public body which *makes* the disclosure rather than the public body which obtains the information. However if the standard form of access is to be “pull” (see comment under

paragraph 12 above) it would be unlikely that the body which is technically making the disclosure is at fault. That body will have allowed access on the basis of the undertaking etc.. of the body requesting access. A more useful deterrent to potential abuse would be a mirror offence which penalises a body which wrongfully obtains data and also penalises any individual who misuses access to obtain information for their own purposes. The data which will be accessible under the proposal will potentially be a magnet for fraudsters and those who wish to sell data unlawfully. There is an offence under section 55 of the DPA which would possibly be relevant however a specific offence provision under this proposed legislation would be an additional deterrent.

25. The Consultation Paper notes that the General Data Protection Regulation ("GDPR") will be in effect by 2018. A number of Articles of the GDPR are relevant to the proposals e.g. the requirement to provide notice of proposed processing, or those Articles which give Member States power to add or include specific provisions to allow for processing for specific purposes or require a legal basis in Member State law for specific processing e.g. Article 6.3 provides that processing for public functions must be based on a legal basis which is proportionate and meets an objective of public interest. The provisions of the GDPR appear to raise some significant potential difficulties with the non-research part of the proposal if my reading is correct that a "pull " rather than a "push" is intended, for example Recital 31 states that,

" Public authorities to which personal data are disclosed in accordance with a legal obligation for the exercise of their official mission, such as tax and customs authorities, or financial market authorities responsible for the regulation and supervision of securities markets should not be regarded as recipients if they receive personal data which are necessary to carry out a particular enquiry in the general interest, in accordance with Union or Member State law. **The requests for disclosure sent to public authorities should always be in writing, reasoned and occasional and should not concern the entirety of the filing system or lead to the interconnection of filing systems.** The processing of personal data by those public authorities should comply with the applicable data protection rules according to the purposes of the processing". [Emphasis added]

It is presumably the intention that, when drafting the legislation, the drafting will ensure that the legislation provides appropriate provisions to satisfy the requirements of the GDPR. However it would give a clearer picture if those were set out as part of the Consultation Paper. The concern would be that, as the GDPR will be superior supervening legislation, any provisions of the GDPR which are inconsistent with the proposed powers would take precedence. If the analysis of the proposal made earlier i.e. that these are, in effect, powers to pull data from other public sector databases, is correct, it may raise a question as to whether they would be regarded as proportionate.

33. It is noted that the definition proposed for "identified" data is not the same as the definition of "personal data" under the current Directive 995/46/EC or the GDPR and that the term "anonymisation" is being used where data could be regarded as identifiable and would not qualify as anonymised data under the GDPR. This risks introducing a level of confusion for public bodies. It also risks the possibility that there is a mismatch between the legal powers on which the public bodies will rely to make disclosures or obtain data (see comments on paragraph 25 above) and the personal data covered by the GDPR. For example, if the proposed legislation and Codes were to permit the disclosure of data which meets the criteria of "anonymisation" as set out in the Consultation Paper without meeting data protection requirements, such disclosures would, technically at least, be in breach of the GDPR.

The GDPR will present real and significant challenges for the public and private sectors. For the private sector there can be significant fines. Although the level of fines for the public sector can be set by Member States, the supervisory authority will still have significant powers. Moreover data subjects will have extensive rights to redress and compensation. I would strongly urge that one set of definitions be used and those should be the ones used in the GDPR. Even if this introduces additional constraints in the long run it will make life clearer and less risky for public bodies.

35. It is noted that the Consultation Paper states that the legislation will "create a single gateway to enable public authorities to share personal data for tightly constrained reasons agreed by Parliament....individual". The example provided however, which is specific to debt recovery, does not do this. It would be helpful to see the proposed draft of the general gateway power.

38. It is noted that it is stated that the receiving authority will not be able to use the data disclosed for wider purposes other than in a narrow range of cases however the example legislation provided allows the further disclosure under the general sharing powers. Is it therefore the case that there will be different levels of restriction in relation to data shared for different purposes? Will this not make it very difficult for public authorities to keep track of and be consistent in how they deal with data governance for data obtained from other public bodies? To the extent possible I would suggest that a consistent set of criteria for future use/disclosure would be desirable.

40. In relation to the Troubled Families initiatives it is noted that the Police are not included in the example legislation proposed (the debt example). It is assumed that both the Police service and the Department of Health would have to be included in any data-sharing in relation to the Troubled Families programme.

43. In relation to private sector bodies there would seem to be a difference between a private sector body which performs an outsourced function i.e. the legal function remains with the public body and a private body that itself performs a public function e.g. a Housing Association. I would agree that any body that carries out a public function in its own right should be given the necessary powers (to the extent that they do not have them or the powers remove the restrictions of a prohibition). However it is difficult to see why powers need to be provided to a body that carries out an outsourced function on behalf of a public body as they are a mere servant and are not exercising powers under their own right.

Question 4 – safeguarding provisions

As noted earlier audit trails, records and annual reports of the use of access powers would be desirable.

Questions 5, 6 and 7 – fuel poverty assistance

I agree that the proposed disclosures appear justifiable and desirable.

58. My understanding is that all the records other than adoption records, which it is not proposed to change, are publicly available. I am therefore not clear what is meant by the statement that, "Where no such statutory gateway exists, information cannot be shared." The information can be shared. There is no legal basis for general electronic access to the registers by other public bodies, which is not the same thing.

60 d There is in existence a facility to check mailings against a register of the deceased which is used by the private sector for checking mailings.

62. It is noted that it is stated that the proposal would be to give electronic access to other public bodies but also that civil registration officers could only disclose if satisfied that the information is to fulfil one or more public functions. However if the access is electronic the civil registration officers can only rely upon a statement or undertaking by the public body accessing the data (e.g. by clicking a mandatory screen that the data is required for a public function). If the access is to be electronic in this way then the onus to only obtain properly, proportionately and so on should be on the party which is obtaining the data.

Question 8

The purposes for which and the circumstances in which such records may be accessed without the consent or the knowledge of the individual or the parents or guardians should be explicit in any legislation.

Question 9

Yes – such arrangements already apply in the private sector.

Fraud against the public sector

I have had to read this several times but my understanding finally is that this is a proposal to allow a wide electronic cross-checking of records across the public sector e.g. an application for a new passport from a specific address in a specific name could be checked against any record of a benefit claim or tax payment in that name for that address, or a Housing Association tenancy. If the application is for a child's passport it could be checked against the birth register or a change of name against the marriage register. If there is no corroboration then it could raise a flag that the application should be looked at more closely e.g. to check that a real person of that name exists at the address given. This would allow a better use of Government data for validation and verification (as opposed to the use of the credit reference data which is currently relied upon for some verification services). Subject to the general comments on the potential impact of the GDPR, as noted earlier, and the other comments on the importance of ensuring that those who might wrongly seek access to data can be penalised, I have no comments on this. It seems a wholly reasonable form of verification, although it might prove difficult in practice.

68 The examples are not wholly helpful as it is not explained what is meant by Tenancy Fraud or how the disclosure of data could assist in these cases.

Debt owed to the public sector

There appear to be two separate issues here – the better establishment of the whereabouts of debtors and their ability to pay, as in the SLC example, and the amalgamation of debts and services to debtors. The use of data to find those who do owe debts and to seek to ensure recovery appears to be realistic and reasonable as long as it is proportionate and applies only to debts of some scale and which can be recovered. However the proposed provision of a holistic service (paragraph 88) appears (with all respect) wholly unrealistic. It would require some form of new agency or the assignment of a debt between public bodies or the appointment of one as an agent for another.

Research purposes

Subject to the general comments made earlier in relation to the impact of the GDPR and the variation between the definitions proposed I have no response on this part which looks wholly logical.

Submitted by Rosemary Jay, Contact details work - Hunton & Williams, 30 St Mary Axe, London EC3A 8EP. [REDACTED] 18 April 2016

aat

Association of Accounting Technicians response to the Cabinet Office consultation paper on “Better use of data in government”

Association of Accounting Technicians

response to the Cabinet Office consultation paper on “Better use of data in government”

1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the Cabinet Office consultation paper on “Better use of data in government”¹ published on 29 February 2016.
- 1.2. AAT is submitting this response on behalf of its membership and primarily for the wider public benefit.
- 1.3. In responding to this consultation paper (condoc) AAT has focussed on:
 - 1.3.1. the principles that promote a free and open society that protects the rights of individuals
 - 1.3.2. the operational elements of the proposals and the related practicalities associated with implementing the measures outlined in the document.
- 1.4. AAT has added comment in order to add value or highlight aspects that need to be considered further.

2. Executive Summary

- 2.1. AAT welcomes the proposals in this consultation which fall into three groups:
 - 2.1.1. Improving public services
 - 2.1.2. Tackling fraud and debt
 - 2.1.3. Allowing use of data for research and official statistics.
- 2.2. In principle, AAT strongly supports the intention in the overarching objective outlined in paragraph 1 (condoc):

“Government needs to do more to unlock the power of data. Information is the key to sound decision-making and efficient operations for all organisations. Proportionate, secure and well-governed sharing of information between public authorities can improve the lives of citizens, support decisions on the economy which allow our businesses to flourish, and improve the efficiency and effectiveness of the public sector.”
- 2.3. AAT recommends that in preparing the Code of Practice (CoP) primary consideration should be given to protecting against the unlawful disclosure of data by introducing the new criminal offence for each and every scenario. (3.38, below).
- 2.4. AAT further recommends that the new criminal offence should encompass unlawful “use” as well as unlawful “disclosure”, as an employee of a public authority could use the data without actually disclosing the data.

¹ “Better use of data in government”

3. AAT responses to consultation questions

Improving public service delivery

Question 1. Are there any objectives that you believe should be included in this power that would not meet these criteria?

- 3.1. AAT is not aware of any objectives that should be included in this power that would not meet the criteria.

Question 2. Are there any public authorities that you consider would not fit under this definition?

- 3.2. In its response to this particular question AAT is commenting from an operational rather than legal perspective, the broad and comprehensive definition in legislation of a legal authority as "a person who exercises functions of a public nature" would appear to be sufficient to encompass all relevant public authorities, which can then be considered and evaluated to make sure they are the 'right' bodies that are suitable for inclusion in the schedule.

Question 3. Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

- 3.3. In principle, AAT is strongly against non-public authorities being included in the scope of delivering public services power because the persons working for them are not civil servants, which means they may potentially be viewed by the courts as being 'used as scapegoats' and therefore less accountable for their actions than their equivalent public authority counterpart.
- 3.4. While it would be possible to extend the laws to include non-public authorities, the risks of data breaches and the potential widespread damage to the citizens (that these proposals are trying to help) will significantly outweigh the benefits that might be achieved.
- 3.5. AAT acknowledges that there will be exceptions to this principle, the case of fuel poverty is a good example (see 3.9, below). In these exceptional circumstances non-public authorities and their employees should be required to acknowledge their joint and several criminal liabilities in the event of unlawful disclosure or use of the data.

Question 4. Are these the correct principles that should be set out in the Code of Practice for this power?

- 3.6. AAT agrees that these are the correct principles (44, condoc) that should be set out in the CoP for this power.
- 3.7. AAT recommends that further principles should be inserted into the CoP.
- 3.7.1. Paragraph 8 of the condoc states that public authorities will "need to ensure compliance with the Human Rights Act 1998, in particular Article 8 of the European Convention on Human Rights". In acknowledging this AAT notes that it would be a duplication, nevertheless the CoP should reiterate that "Everyone has the right to respect for his private and family life, his home and his correspondence."
- 3.7.2. AAT, further, considers that the CoP should acknowledge that there is a "Right to an effective remedy" (Article 13 of the European Convention on Human Rights)

- 3.7.3. Moreover, the CoP should include the principles and guidance for investigating and reporting complaints by citizens with a view to sanctioning the persons responsible.

Question 5. Should the Government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

- 3.8. AAT considers it appropriate for government to share information with non-public sector organisations for the sole purpose of providing assistance to citizens living in fuel poverty, as outlined in paragraphs 45 to 48 (conduc), provided it is carried out in an appropriate way.

Example,

In the case of fuel poverty it would be appropriate for the government to share information with a citizen's energy provider about that citizen's entitlement to the rebate under the Warm Home Discount Scheme. It may not, however, be appropriate to share the information of a particular citizen with all energy suppliers as this may result in the citizen being pestered to change energy supplier.

- 3.9. This proposal would be particularly helpful to vulnerable citizens who may not have the wherewithal to assess their eligibility to, and make a claim for, their rebate. There does, however, need to be the safeguard that is applied to non-public sector organisations to ensure the information is only used for the agreed purpose and a proportionate way to avoid issues arising such as given in the example 3.8 (above).

Question 6. Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

- 3.10. AAT agrees that the provision of energy bill rebates and information about energy efficiency support are appropriate forms of assistance to those citizens living in fuel poverty.
- 3.11. AAT considers that it would be more effective and better received if the information concerning energy efficiency support came from the government rather than an energy supplier. In the case of the latter the received information may be perceived to be unsolicited advertising or promotional material and discarded.

Question 7. Are there other forms of fuel poverty assistance for citizens that should be considered for inclusion in the proposed power?

- 3.12. AAT has not identified any other forms of fuel poverty assistance that could be provided in the context of the proposed powers in this consultation documents.

Question 8. Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

- 3.13. Given the proposed safeguards (para 18, conduc) AAT is of the opinion that it would be reasonable and that avoid unnecessary delays for a government department to directly access birth details.
- 3.14. Furthermore, such an action would avoid incidents where citizens are asked by one government department to provide a hard copy of the birth details, already held by another department and which in order to comply with the request the citizens would either have to forward on request or even worse they might need to obtain from the General Register Office (another government department).

Question 9. Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

- 3.15. Given the proposed safeguards (para 18, condoc) for the sharing of information between civil registration officials and specified public authorities to make sure records are kept up to date provided the information is required to fulfil one or more public functions (58, condoc) then AAT considers that the proposal is appropriate.

Question 10. Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

- 3.16. AAT is of the view that the primary safeguard around access to data is the "proposed new criminal offence for unlawful disclosure" (para 18, condoc) and in that regard the measures outlined in paras 73-79 (condoc) are a proportionate response to combatting fraud.

Question 11. It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the Fraud gateway be operational for before it is reviewed?

- 3.17. AAT supports the proposal that the power is reviewed three years after it comes into force. However, it is likely that the power will be monitored on an ongoing basis therefore AAT would recommend that the Minister and the Information Commissioner's Office keep their options open in the event that the ongoing monitoring indicates the need for corrective action and an earlier review of the powers.

Question 12. Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?

- 3.18. The consultation document states in para 8 that "Billions of pounds of debt is owed to the Government" which suggests that there is a significant number of vulnerable debtors who owe multiple debts. Given the scale of the issue AAT recommends that the government works with the HM Courts & Tribunals Service (HMC&TS) to ensure fairness when making decisions about affordability.
- 3.19. Assuming that the HMC&TS will be dealing with a significant number of cases, as a result of identifying and pursuing these debts, then consideration will need to be given to the resource implications. In response, AAT recommends working with the Money Advice Service which may also be dealing with a significant number of cases.
- 3.20. When pursuing a citizen for multiple debts, care needs to be taken to avoid the citizen being, or feeling, victimised so that the citizen that does not take drastic action such as turning to suicide or criminality. The objective should be to help the citizen to see a positive future free of debts.

Question 13. How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

- 3.21. AAT recommends that the public authority engaged in the pilot be required to survey and collate information from affected citizens over the possible impact of a particular pilot on them, in order facilitate an internal review, or inform an independent third-party such as the Information Commissioners Office.

Question 14. It is proposed that the power to improve access to information by public authorities for the purpose of better managing debt owed to government will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the debt power be operational for before it is reviewed?

- 3.22. AAT is of the view that, where the powers are for the purpose of better managing debt owed to government, there is the potential for a high negative impact on affected citizens, and if this is the case the proposed review period of three years (para 93, condoc) is too long to allow negative impacts on citizens to continue unabated.
- 3.23. AAT therefore recommends that this aspect of the powers is monitored on an ongoing basis by the public authority and reviewed by the Minister annually rather than after a defined period of time.

Question 15. Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

- 3.24. Taking into account that in most instances the fee will be an inter-governmental transaction there would seem little benefit in levying a fee in the first place. The situation would of course be different where the information was supplied to a profit making third-party.
- 3.25. AAT suggests that it may be better to provide guidance on how fees should be calculated on a cost covering basis so that the notional inter-governmental transaction cost appropriately reflects the savings made by one public authority of not having to collect the information compared to the notional inter-governmental cost which will contribute to the other public authority's costs of collecting the information. This would avoid distortions within the budgets of public authorities if a maximum fee was permitted and it is set too low it could lead.

Question 16. To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

- 3.26. AAT agrees that the UK Statistics Authority as the accreditation body should publish details of rejected applications and the reasons for their rejection.
- 3.27. The rationale for publishing the details should be for transparency rather than consistency as some public authorities may, quite rightly, be more or less reluctant to disclose information depending on their attitude to the risks to their credibility of inappropriate disclosure. The publishing of details of rejected applications and the reasons for their rejection should be presented in a way that does not put pressure on a public authority to conform to the norms for disclosure.

Question 17. What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

- 3.28. AAT recommends that the principles or criteria should require the organisation undertaking the research to specify the objective of the research and explain how it satisfies the "public benefit requirement"².
- 3.29. Furthermore, that the research has a stated hypothesis that if proven, will result in either change to legislation or change to a public authority's operation procedures.

² The "public benefit requirement" is already defined in Charities Act 2011 s.4(1) and this could be used as the starting point for defining the term for research purposes.

Question 18. Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

- 3.30. It appears from para 118 (condoc) that the notice for the supply of data would be issued by the Statistics Authority to a public authority (except Crown Bodies). While AAT is neither and on that basis can only offer the view that two years appears to be a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority.

Question 19. If your business has provided a survey return to the ONS in the past we would welcome your views on:

- (a) the administration burden experienced and the costs incurred in completing the survey, and**
(b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics.

- 3.31. AAT has provided survey returns³ to the ONS in the past and for those specific returns the administration burden experienced and the costs incurred in completing the survey were considered to be relatively negligible to an organisation of AAT's size.
- 3.32. The only feasible way for the UK Statistics Authority to obtain this information within one month of the end of the quarter (31 Dec 2015) was via a survey document. Although, it should be noted that this information would become available when AAT's Financial Statements are published within nine months of the accounting period end.
- 3.33. Businesses provide various public authorities with large amounts of information, for example:
- payroll (PAYE) information about individuals to HMRC
 - business tax and corporation tax information to HMRC
 - business turnover and costs through VAT returns to HMRC
 - financial statements to Companies House
- 3.34. In order to reduce the administrative burden on businesses it would be helpful if the UK Statistics Authority only required a business to provide information where it cannot be obtained from another public authority e.g. HMRC or Companies House.
- 3.35. From AAT's experience (3.31, above) if UK Statistics Authority needs the information on a more timely basis than an ONS Survey may be the only feasible option given that the information would only become available through another public authority (Companies House) many months later.
- 3.36. Given that it is a mandatory requirement for trading companies to file their statutory accounts with HMRC in iXBRL⁴ format; it should be possible for the ONS to access the required data that has been lodged with HMRC for its own purposes.
- 3.37. An exception to the above would be in respect of where the UK Statistics Authority has a specific need for the information to be provided on a timely basis and waiting for the information to become available through another public authority many months later would not be practical, or where the company is non-trading and does not supply the required data in iXBRL format to HMRC.

³ Quarterly acquisitions and disposals of capital assets survey

⁴ <https://www.gov.uk/government/publications/xbml-guide-for-uk-businesses>

Question 20. What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to processes that collect, store, organise or retrieve data?

- 3.38. In preparing the CoP serious consideration should be given to protecting UK citizens against the unlawful disclosure of data and in each and every scenario the new criminal offence for unlawful disclosure should be introduced, which is consistent with existing criminal sanctions provided for under section 19 of the Commissioners for Revenue and Customs Act 2005 et al as outlined in the paragraph 18 of the consultation document. The new criminal offence should encompass unlawful "use" as well as unlawful "disclosure", as an employee of a public authority could use the data without actually disclosing the data.
- 3.39. The new criminal sanction is the key protective principle and AAT notes its inclusion in paragraph 13 of the consultation document, however, its application should apply to the data once it is disclosed to another public authority and also to any data with which it is combined.

For example:

A public authority could obtain additional information which, if, combined with its existing data could suggest a pattern of behaviour. The combined information could be used to gain a superior bargaining position. It would therefore be appropriate for the combined information to also be covered by the criminal sanctions.

4. Conclusion

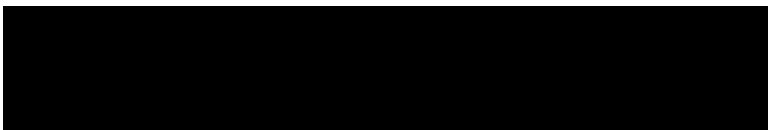
- 4.1. AAT is, in principle, strongly against non-public authorities having access to data. It is acknowledged that there will be exceptions to this principle. The case of fuel poverty is a good example. Therefore, in such exceptional instances the non-public authorities and its employees should be required to acknowledge their joint and several criminal liabilities in the event of unlawful disclosure or use of the data. (3.3-3.5, above)
- 4.2. In respect of access to civil registration it makes sense for one government department to share information with another government department in order to avoid situations where citizens are asked by one government department to provide a hard copy of the information, which the citizens would then need to obtain from another government department. (3.13-3.14, above)
- 4.3. The sharing of information is a proportionate response to combatting fraud provided that the primary safeguard of the "proposed new criminal offence for unlawful disclosure" is applied. (3.16, above) AAT suggests that the new criminal offence should encompass unlawful "use" as well as unlawful "disclosure". (3.38, above)
- 4.4. AAT recommends that care is taken when improving access to better manage debts owed to the public sector, in order to avoid the citizen being, or feeling, victimized so that the citizen that does not take drastic action such as turning to suicide or criminality. (3.20, above) The sharing of information should be used in a positive way such as to identify and alleviate social issues of over-taxation where taxpayers cannot meet their tax liabilities on an ongoing basis and a cycle of debt ensues.
- 4.5. AAT recommends that in preparing the Code of Practice primary consideration should be given to protecting against the unlawful disclosure of data by introducing the new criminal offence for each and every scenario. (3.38, above)

5. About AAT

- 5.1. AAT is a professional accountancy body with over 49,700 full and fellow members⁵ and 80,500 student and affiliate members worldwide. Of the full and fellow members, there are over 4,200 members in practice who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.
- 5.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

6. Further information

If you have any questions or would like to discuss any of the points in more detail then please contact AAT at:



Aleem Islan
Association of Accounting Technicians
140 Aldersgate Street
London
EC1A 4HY

⁵ Figures correct as at 31 Mar 2016

Better Use of Data Consultation Response from West Midlands Combined Authority

Queries on this consultation response to: Jason Lowther, Birmingham City Council, email [REDACTED]

Introduction

This paper provides the response of West Midlands Combined Authority (WMCA) to the Cabinet Office consultation on the “Better use of data in government”. Our response provides general feedback and then responds to the specific questions asked in the consultation paper. WMCA has recently reached a Devolution Agreement with Government which includes support for Data Devolution – we would like to work with the Cabinet Office on progressing this including the ideas in the first section of this paper.

General comments

The proposed new approach and specific powers are helpful in taking forward this important issue. The proposals are an important contribution to making sense of a complex landscape.

The current proposals are a somewhat eclectic selection of specific topics; it would be useful to ground these in a long-term aspiration (eg to deliver the most cost-effective and efficient public services by appropriate use of government data, to enable a place-based approach and support economic growth) and general enabling principles (e.g. enabling a proactive and preventative approach to help people; reducing threat, risk and harm; adopting a common person identifier used across government systems).

There are other areas where this type of thematic approach could usefully be applied – eg health and social care services around the frail elderly, early intervention to prevent offending, child protection.

The current proposals don't fully support moves to deliver appropriate, cost-effective, joined-up preventative approaches and early intervention to prevent harm. Proposals should cover issues which indicate an individual is “at risk of” or who “displays warning signs for” a negative outcome, ensuring that services are proactive not just reactive. As well as the current focus on initial identification issues, it would be useful to focus on the use of data to plan and deliver services, and to track the progress of individuals. The requirement for organisations to share data for research purposes should be mirrored in a requirement to share data for service design/delivery purposes also.

It is helpful that the paper talks about “individuals and households who face multiple disadvantages” rather than just the current “troubled families” definition.

Health data

As acknowledged in the consultation paper, the treatment of health information (and Dept of Health data) needs to be included in the final proposals. Sharing of health information is one of the most critical data needs to improving the use of government data. We recognise the sensitivities in this area but note that there are multiple existing data sharing agreements which may provide helpful ways forward. For example, Solihull MB Council's Data Sharing Agreement with NHS partners includes detailed risk stratification and specific treatment of research.

The Government's devolution agenda potentially provides a low risk way to test new data approaches, including arrangements with health services. There could be considerable value in undertaking local demonstration pilots e.g. around health and social care integration, mental health or frail elderly issues? WMCA would be interested in co-developing these with the Cabinet Office in line with our Devolution Agreement with Government.

We note that a national review of research governance arrangements in health and social care services has just completed public consultation:

<http://www.hra.nhs.uk/about-the-hra/our-plans-and-projects/replacing-research-governance-framework/>

Schools

The issue of schools' data will be particularly important given the somewhat atomised management arrangements for these in future. All schools should be expected to engage in data sharing arrangements. The refusal of many Academy schools to share attendance data has been a significant issue for the Troubled Families programme and work to reduce young people "not in education, employment or training".

National Insurance Numbers

The effective sharing of data is undermined if a universal personal identifier is not available. Whilst NHS Numbers have been useful in health and social care areas, the NINO has wider application. A significant barrier experienced in the Troubled Families Programme is the lack of specific individual information from DWP (eg NINOs to help cross-reference intelligence). The current proposals rule out the use of HMRC data, which could inadvertently limit the use of NINO information. NINOs are not sensitive information and could be an essential tool in enabling effective identification and avoiding data errors. They should therefore be explicitly open for cross-referencing information.

With data linkage and de-identification it is important for research and population health aspects to maintain a level of geography and demography within the dataset, e.g. lower super output area and age, gender and ethnicity.

Proposed new criminal offence

We are concerned about the introduction of a new criminal offence in this area. There will need to be clear safeguards to avoid this making data owners become even more risk averse, with negative outcomes for vulnerable people and public service cost-effectiveness. The proposals need to clarify whether the criminal offence would be corporate or personal.

We recognise that the proposals increase the number of bodies involved in data sharing which increases the risk of fraud or negligence. However, the main mitigation of this risk should be through clear responsibilities, systems and processes. We believe a devolved approach would be most effective in delivering the required outcomes whilst minimising risks (see below).

Devolution and place-based approach

We suggest that the Government's devolution agenda provides opportunities to consider where data is best "held" or "stored" to enable a place-based approach, providing a shared view of citizens and service users for more effective service planning and delivery, better targeting public resources, and the support of local economic growth.

A devolved approach would open up new opportunities for:

- **robust assurances for security and privacy (for example with named data controllers and appropriate systems and responsibilities)**
- **combined authorities to develop a leading role in data management, sharing and analysis**
- **shared data management and analytic capacity**
- **piloting the use of health data**
- **testing the use of personal identifiers such as NINO**
- **development of holistic privacy impact assessments**
- **developing relationships with the regional research community**
- **engagement with the general public on the appropriate use of their data**

We would like to explore piloting this "data devolution" with the Cabinet Office.

Public engagement

We recognise that there is significant public concern about potential misuse of personal data. What is needed is an open discussion of the benefits of sharing data for the individuals (and wider society), and the safeguards that are in place to ensure privacy and data security. WMCA would be interested in collaborating with the Cabinet Office to pilot this engagement as part of data devolution.

Responses to specific consultation questions

Improving public service delivery	
<p>1. Are there any objectives that you believe should be included in this power that would <i>not meet</i> these criteria?</p>	<p>The principal of benefit to the subject needs careful definition and assessment. There may be cases where an individual does not see an intervention as immediately beneficial, but a reasonable person may judge it to be beneficial in the longer term (for example preventing suicide, treatment for drug misuse, benefit sanctions leading to employment, child protection interventions).</p> <p>Whilst understanding the pragmatic benefit of excluding “benefits to wider society”, we would suggest that this decision should be kept under review.</p> <p>The prohibition on new databases needs to be carefully phrased to avoid undermining local initiatives to improve data sharing and security. Perhaps refer explicitly to “no new <u>national</u> databases”.</p> <p>The disposal of unused data or data that becomes redundant needs to be considered.</p>
<p>2. Are there any public authorities that you consider would not fit under this definition?</p>	<p>All schools (including academies and free schools) should be required to engage in data sharing with local public services.</p> <p>We welcome the work that the Cabinet Office and Heath officials will undertake to look at how and which health and care data may be integrated into the proposed legislation as we feel this area of data sharing is less progressed than others yet of key importance.</p>

<p>3. Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?</p>	<p>Yes.</p> <p>All providers of public services need to be included (including those from the private sector, voluntary/ community sector, Registered Social Landlords, etc.). This should include all services commissioned with public money and/or relating to the statutory responsibilities of the public sector.</p> <p>Appropriate legislative safeguards and governance need to be place. A 'high' minimum security standard must be maintained by all bodies. Public bodies are more open to public scrutiny than private companies. All bodies using public funds should be open to the same level of scrutiny. Ignorance or naivety can't be allowed to result in the loss of misuse of information.</p> <p>Private companies may fulfil a number of functions (private and public) and potential conflicts of interest in holding or processing additional data should be declared, along with the additional safeguards. This is open and transparent and would provide data subjects with more added assurance. There are significant financial gains from using the data (or subsets) for 'other' purposes.</p>
<p>4. Are these the correct principles that should be set out in the Code of Practice for this power?</p>	<p>Yes</p>

Providing assistance to citizens living in fuel poverty

<p>1. Should the Government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?</p>	<p>Yes</p> <p>The Government should share information with non-public sector organisations. This could enable those organisations to target households individually that are deemed to be in fuel poverty rather than simply aiming their efforts at a particular post code level.</p>
<p>2. Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?</p>	<p>Yes</p> <p>Energy bill rebates, along with information about energy advice and support would be appropriate forms of assistance to families in fuel poverty. The two go hand-in-hand. Rebates would be helpful initially, but in the long term residents may need to manage their energy usage more effectively and know where to go to seek assistance if there is still a shortfall.</p> <p>It would be helpful to have linked publicity to say why it has been provided – link to information about staying safe and well in winter.</p> <p>Other topics to promote include:</p> <ul style="list-style-type: none">• Tackling excess summer deaths – due to high temperatures – this is often forgotten by many residents.• Promoting the take-up of the flu jab for vulnerable households.
<p>3. Are there other forms of fuel poverty assistance for citizens that should be considered for inclusion in the proposed power?</p>	<p>Yes.</p> <p>There are significant opportunities for these households to get a more holistic solution to their problems.</p>

(3) continued/-

Examples include advice on affordable warmth, tariff switching, NHS or LA funded heating and insulation measures, ensuring cold weather alerts reach the right people, targeting winter warmth campaigns, improved targeting and uptake of influenza vaccinations, that buildings meet ventilation and other building and trading standards.

The data should therefore also be made available to LAs and the NHS on request. This would be in keeping with the access that LAs have had up until now with bulk EPC data.

Also, indicators relevant to the single person discount should be included, especially for those who fall just outside the benefit "safety net".

We know that it is important to ensure homes are effectively insulated. Availability of this type of data would enable targeting of assistance (see answer to question 1).

LAs would also be able to mention on bills where a resident is likely to qualify for energy / insulation works. For example, those who are 'passport' through as a result of benefits.

Access to civil registration to improve public service delivery	
1. Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?	<p>Yes.</p> <p>This information is already in the public domain (at local registrars) and online direct access is a natural progression.</p>
2. Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?	<p>Yes.</p> <p>Council Revenues officers have had "deaths" data provided for many years, but are specifically prevented from sharing this to help deliver better services to the bereaved.</p> <p>With <i>Tell Us Once</i> (TUO) details of the next of kin are shared with the details of the deceased then passed to specific local and central government services. Bulk sharing of data would need to be limited to the deceased details for the purpose of keeping records up to date, and where next of kin details were also required to be shared this would need a data sharing agreement. There would need to be a generic means of obtaining agreement and specified formats for sharing the data.</p>

Combating fraud against the public sector through faster and simpler access to data

- | | |
|---|--|
| <p>1. Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?</p> | <p>Appropriate legislative safeguards and governance need to be place. A 'high' minimum security standard must be maintained by all bodies. Public bodies are more open to public scrutiny than private companies. All bodies acting on behalf of a public body or funded from public funds should be open to the same level of scrutiny. Ignorance or nativity can't be allowed to result in the loss of misuse of information.</p> |
|---|--|

(1) continued/-

The public may be justified in being worried out such sensitive data being shared. Private companies may fulfil a number of functions (private and public) and potential conflicts of interest in holding or processing additional data should be declared, along with the additional safeguards. This is open and transparent and would provide data subjects with more added assurance. There are significant financial gains from using the data (or subsets) for 'other' purposes.

It may be necessary for a regulatory body (ICO?) to carry out additional inspections or 'test checks' on activity.

It could be advantageous to apply similar safeguarding methods as were introduced to the use of directed surveillance to instil greater transparency and public confidence, namely a second tier approval process built into the data request (example in the use of RIPA, this is authorised by the Local Authority and then the Magistrates Court are asked to confirm and authorise the request) – If a two tier application process for the data request / release was introduced then confidence in its application might be secured.

	See also our comments on data devolution under "general comments" earlier related to named data controllers at local level.

<p>2. It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the Fraud gateway be operational for before it is reviewed?</p>	<p>The area of the fraud data exchange gateway will need to be open for at least 24 months before any meaningful review is undertaken, this will allow for the scope of any pilot to be fully tested and the impact of the data exchange in the resolution of said investigation fully understood (allowing for the potential criminality to be taken through the courts and the evidence gathered as a result of the data exchange tested at the highest level). We note the duty to review in the proposed bill is talking about 3 years.</p>
<p>Improving access to data to enable better management of debt owed to the public sector</p>	
<p>1. Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?</p>	<p>The relevant upper tier local authority seems to provide the most appropriate organisation, given its local knowledge, universal footprint and democratic accountability. In particular, Housing Benefit & Council Tax Reduction (CTR) and Social Care departments including welfare rights staff working in the debt and charging arena.</p> <p>Financial Institutions are critical.</p> <p>Utility providers automatically to offer best tariffs. Social tariffs to be automatically offered to individuals and families who are considered vulnerable.</p> <p>Social enterprise and community interest groups</p> <p>HMRC (tax credits etc)</p> <p>Citizens Advice Bureaux (Both Business and personal debts)</p> <p>Housing Associations (Rent Arrears)</p> <p>All organisations who are nationally recognised to assist people with personal debt such as Step Change</p>

	and National Debt Line to mention a couple.
2. How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?	Engage closely with local public agencies.
3. It is proposed that the power to improve access to information by public authorities for the purpose of better managing debt owed to government will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the debt power be operational for before it is reviewed?	The proposal will involve significant work and change for local agencies, therefore a minimum review period of 3-5 years may be appropriate.
Access to data which must be linked and de-identified using defined processes for research purposes	
1. Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?	<p>There should be the right for public authorities to charge for the commercial use of data, and to recover costs.</p> <p>Fees should be discretionary.</p> <p>A standard fee scale could mirror that for Freedom of Information Act requests, with a maximum fee which is controlled.</p> <p>Need to clarify whether this is for <i>all</i> research purposes and also whether this is one-way or two-way?</p> <p>There is more scope for public sector as a whole to look at charging for access to data that may be of commercial value.</p> <p>Like FOIA requests, it might be appropriate to include an exemption based on excessive staff time.</p> <p>Will accreditation incur a cost to the authority and involve refreshment / renewal? If so, coupled with additional work, reducing budgets and staff, it is only right that costs should be covered.</p>
2. To ensure a consistent approach towards departments accepting or declining requests for disclosing	<p>Yes. The principle of openness should be paramount. As well as rejected applications, accepted applications should be published. A system such as "What Do They Know?" for FOIA requests could be useful here.</p> <p>Publication would help to understand reasons for decisions.</p>

<p>information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?</p>	<p>We would like to see data providers (in particular local authorities) engaged in advising the UKSA in its new accreditation role.</p>
<p>3. What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?</p>	<p>It should be made clear that “public policy” includes the design of public services and interventions, and support to economic growth.</p> <p>We suggest that the Government’s devolution agenda provides opportunities to consider where data is best “held” or “stored” to enable a place-based approach, in a way that has robust assurances for security and privacy. This could also open up new opportunities with the research community on a regional basis. We would like to explore piloting this “data devolution” with the Cabinet Office.</p> <p>Other criteria could include linkage with public sector and public benefit. The “Informing Public Policy and the Professions” element of recent HEFC <u>work</u> should help here.</p> <p>Examples of criteria indicating public benefit could include:</p> <ul style="list-style-type: none"> • Part of higher educational research – tap into university research capability? • Pays due regard to research ethics – i.e. reference MRS ethical guidelines, also Human Rights, DPA etc. <p>An example of a criterion indicative no public benefit could be where its primary purpose is for commercial gain.</p> <p>In deciding whether a request is of public benefit can the data asset owner challenge a decision? Can the requestor appeal against a decision?</p>

Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research	
1. Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?	Yes, but the extent of this needs to be very clearly communicated. There is already a lot of data that is statutorily reported to national bodies, which places a burden on staff in local areas both to improve data quality and to put appropriate systems in place. Two years is enough time to do this but organisations need clarity as early as possible on what the changes will be and what resources they will be provided with to enable this.
2. If your business has provided a survey return to the ONS in the past we would welcome your views on:	Though not providers of this data, we are users of it and hence, we do agree with the principle of UKSA and ONS having access to identifiable administrative data as this is definitely required; future plans for the Census 2021 and beyond will need this change in legislation to access this data. For the business datasets, the current survey structure isn't ideal, data is delayed and the small sample sizes result in wide confidence intervals. So if more accurate and timely data can be achieved from administrative sources then this would be welcomed. Hence we are concerned with the detail of what data will be published and available for us to use, though we recognise this is beyond the scope of this consultation, and we have already provided our comments regarding loss of detail or coverage in recent ONS consultations which we assume will be referenced.
(a) the administration burden experienced and the costs incurred in completing the survey, and	
(b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics.	
3. What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to processes that collect, store, organise or retrieve data?	

NO2ID Response to "Better Use of Data" Consultation Paper

NO2ID, Box 412, 19/21 Crawford Street, LONDON W1H 1PJ

Prepared by Guy Herbert, General Secretary – April 2016

General Remarks

We have been here before. Though it is not mentioned in this paper, the open policy exercise was continually keen to emphasise to civil society groups that Whitehall had learned from the debacle of the withdrawn cl.152 of the Coroners and Justice Bill in 2009. These proposals show it has **not** really grasped the fundamental objections to broad data-sharing. The ideology of paternalistic oversight, management by numbers, is intact and recognisably the same as that being promulgated by Tony Blair's e-Envoy in the 90s and proceeding through the DCA "Information Sharing: vision statement" and the Walport-Thomas Review in the mid-00s.

The focus throughout is on purported, internalised, benefits. There is nowhere any acknowledgement that there may be costs and negative externalities, let alone to make any cost benefit analysis. Requests for the latter have been met with hand-waving.

That the crowning argument for these extraordinary powers is the need to make the collection of data under the Statistics of Trade Act 1947 less burdensome says something about how the government approach is not modernising, but stranded in the early 20th century. The huge power of data science is being conscripted to pursue policies already in existence, willy-nilly, rather than taken into account to make new policies fit for a free society in a technological age.

The powers themselves (while making ritual obeisance to Data Protection) show as much respect for privacy and citizens as free individuals as did the totalitarian central planners of the same era. They are profoundly dangerous. We suspect that they are potentially **far** worse for civil liberties and privacy in practice than the cl.152 Information Sharing Orders, because very general in application and moreover designed to be invoked by officials in pursuit of their own day-to-day functions, rather than through specific ministerial approval and order-making procedure.

Data-sharing as conceived here is a means for officials to escape the constraints of rule of law, not a limited or well-defined means to limited or well-defined ends. Our principled objections to the Coroners and Justice Bill, part 8, apply with at least equal force to these proposals, and I append to this response a copy of our 7-year-old parliamentary briefing on those proposals for comparison. The fiddling with procedures, grand apparatus of Codes of Practice and Privacy Impact Assessments, and the fostering of interest groups in pilot projects should not be allowed to obscure that.

"Localism, user input and collaboration are driving innovation and change in the online world. But the government's all-seeing, all-knowing concept of centralised state control demonstrates that government has not understood or reacted to these major changes..."

"At the same time, in the rest of our lives, technology is going in the other direction, enabling us to choose what data to store and share online. It is also best practice to minimise the amount of data acquired by service providers in the first place."

"These are the principles on which government IT should be built. The potential benefits are huge. Giving control of personal data back to citizens will improve the quality and efficiency of public services, will be less expensive and will be far less intrusive."

- Liam Maxwell [now HM Government CTO] in *It's Ours* (Centre for Policy Studies, 2009)

The Cabinet Office should decide which set of principles it is pursuing. The consultation could easily end in a more arbitrary and secretive version of cl.152 combined with a new, unacknowledged, but more powerful, National Identity Register.

Specific Remarks on the Consultation Paper

(numbers are paragraph numbers – which are in broken sequence)

The minister's introduction suggests that "increasing citizen's confidence in the government's use of their data..." is a necessary outcome of the policy. The process and consultation make us much less confident that the government's use of our data will recognise that it is ours at all. Rather it seems calculated to spread alarm among anyone concerned about personal information that government wishes to treat it as government's information, whenever expedient for government to do so.

5 states "These proposals are not about... collecting new data from citizens or weakening the Data Protection Act 1998" These claims are false, or so misleading as to be true lies. The Data Protection Act is side-stepped by a statutory exception, such as any of the proposals. Newly matched or re-purposed data is thereby made into a new collection of information on citizens – and that is the sole point of sharing it.

8 makes sweeping assertions for which no evidence is adduced.

9 encapsulates the grand planning assumptions underlying the project: "To understand the bigger picture and address the complex challenges that face the nation, public authorities need to work together." Possibility, desirability and means are all assumed.

14 shows the unexamined assumptions at work: Why should we believe the 'legal barriers' of confidentiality and *ultra vires* are less important than the imperative to maintain a statistical series and make life easier for the ONS? Should ONS not first make the case that the statistic is worth more to the public than the costs of deriving it?

15 provides an alternative justification for data-collection and -sharing: Some people would like to have it. It is not normally considered adequate grounds for me to trample on your interests that I and my friends want to.

13 (bis) We do not think that the policy reflects these principles. Sharing in the fashion proposed is implicitly creating new databases, new relations between mass data. The whole point of the policy is to make sharing easier, less exceptional, and therefore less discriminate. Any new enactment will walk through or around the DPA. And maintaining a sanction over further disclosure misses the critical point: what there is to worry about in the policy is the unfettered use of formerly confidential data that it legitimises within government.

16 (bis) – 26 is largely vacuous, without clarity as to proposed controls or the definitions of the entities discussed.

33. The distinctions made here are mistaken. Computer scientists and data protection lawyers will have more to say on this subject than NO2ID, but it is worth remarking that "de-identified data" is probably a spurious category, and that "anonymisation" is difficult and entirely context dependent. What is anonymous on its own, readily ceases to be so if shared.

51. As noted at 15 above, that stakeholders like a policy catering to them is neither surprising, nor an argument for imposing on others.

56-66 These are proposals to which NO2ID is bound fundamentally to be opposed, amounting as they do to the creation of a National Identity Register by merger.

"People will find it weird that the prime minister doesn't want to stop and think about the dangers of a national identity register"

68 That gateways are specific and limited is a consequence of rule of law. Without endorsing any of the existing powers, we think that limiting official power to what is laid down by law has a high value.

77. A This concept of 'validation' is at odds with the widely understood concepts of identity verification being properly employed under sound technical and privacy principles by the Cabinet Office's own Verify scheme. B contradicts A – the validation is **not** binary if one answer automatically leads to further data transfers/leakage, and either could.

78 A (note) Throughout the discussion there is a hidden assumption that fraud is more likely than error, and that anomalies should lead to sanction. This is not anywhere justified.

78 B (note) Side-query: If the aim is **prevention** of fraud, why would one avoid stopping attempts by tipping-off potential fraudsters they were under investigation?

79. Unclear what the "principle of transparency" being promoted here is, and how the respective measures contribute.

84. Box. Not explained why the existence of a cumbersome paper procedure doesn't just require a better designed procedure, rather than pre-emptive mass matching and casting aside rules of confidentiality. Where people have a motive to share data to make a claim, you can just ask for their consent for that purpose.

94-95 The 'public benefits' ascribed here are vague and unquantified. And the outlined situations hint at the public choice problem in which the costs are borne by different sets of people from those who obtain the benefits. If a purported economic or social benefit to be gained from research could be lost by delay, it is hard to see how it could be the subject of policy.

101. Who agreed? Those participating (particularly civil society organisations participating) in the open policy-making process were assured that their participation would not be taken as endorsement of its premises or product.

113. A case of "we wouldn't start from here". Policy should not assume that because a function exists it is entirely justified and should only be built upon, not weakened. NO2ID would like to see the powers more limited if they have to exist at all. The fact they have limitations doesn't bother us.

113 a. This comes under both "rule of law" and "sovereignty of parliament". We submit that the ONS should accept them.

114. "The modern production of statistics" from data scarcely requires information sharing at all, and we suggest where statistics are actually necessary (which is disputed by many), it is the collection and sharing of data unnecessarily that are dispensed with, on cost and efficiency, as well as privacy, grounds.

Consultation Questions

Improving public service delivery

1. Are there any objectives that you believe should be included in this power that would *not* meet these criteria?

The question begs the question. We do not endorse the criteria, purposes or the power, so we can hardly offer reasons for them to be widened.

2. Are there any public authorities that you consider would not fit under this definition?

No. This is a broader definition than many would agree to, and seeking to make it catch-all is very telling concerning the notion that the proposals are modest.

3. Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

No.

4. Are these the correct principles that should be set out in the Code of Practice for this power?

No. These are not any constraint in practice, merely ritual procedural exercises that will inevitably be internalised into check-lists for efficient disposal.

Providing assistance to citizens living in fuel poverty

5. Should the Government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

No. Not at all. Policy could and should be designed around citizen privacy; not to abridge privacy whenever existing policy conflicts with it.

6. Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

Not a question we can have a view on.

7. Are there other forms of fuel poverty assistance for citizens that should be considered for inclusion in the proposed power?

No. There may be forms of fuel subsidy that are less intrusive, Have they been considered?

Access to civil registration to improve public service delivery

8. Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

No. This is at odds with the effort taking place in other parts of government to use modern means of securely certifying personal attributes.

9. Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to families of a deceased person)?

No. This is in effect a population register. In the chosen emotive example it is not problematic to obtain consent to propagate individual death records.

Combating fraud against the public sector through faster and simpler access to data

10. Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

No. Because the power to obtain and collate personal information ad hoc is itself the problem, Codes of Practice tend to deal with edge cases, not the central ones where a power is used as intended but in doing so imposes the costs of suspicion and personal exposure on innocent members of the public.

11. It is proposed that the power to improve access to information by public authorities to combat fraud will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the

Fraud gateway be operational for before it is reviewed?

Not a question it is possible to answer. It is more important to determine the criteria on which it will be evaluated are clear prospectively, and take into account both costs and benefits properly, including externalities.

Improving access to data to enable better management of debt owed to the public sector

12 Which organisations should Government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtors who owe multiple debts?

We have no view.

13 How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

State the objectives explicitly in advance and be determined to abandon schemes that do not meet their objectives or have unforeseen negative consequences.

14 It is proposed that the power to improve access to information by public authorities for the purpose of better managing debt owed to government will be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the debt power be operational for before it is reviewed?

As Q11: Not a question it is possible to answer. It is more important to determine the criteria on which it will be evaluated are clear prospectively, and take into account both costs and benefits properly, including externalities.

Access to data which must be linked and de-identified using defined processes for research purposes

15 Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

Yes; no maximum. If research has a benefit to the researcher or those funding him, then it should have a price. Note however that most of the cost is borne by the citizens or other entities whose data is used. Perhaps they should set the price and be paid.

16 To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Is consistency obviously desirable? Does it in any case follow that such publication would create it?

17 What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

None. The point of research is to expand knowledge – a benefit identified by the researcher. To allow officials to pre-judge purported 'public benefits' would likely bias research towards the theories popular among officials.

Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

18. Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

We have no opinion. But note our comment on 114.

19. If your business has provided a survey return to the ONS in the past we would welcome your views on:

(a) the administration burden experienced and the costs incurred in completing the survey, and

(b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics.

(a) it was a nuisance and a cost. And may not have produced useful information in any case since the questions had plainly been devised for crude sampling in another era in which service firms and NGOs formed a smaller part of the economy.

(b) There are none. Burdens may be made less visible, but the costs will still be borne by the subjects of investigation.

20. [Answered in the form that appears in the summary rather than the less clear one in the body of the paper] What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to processes that collect, store, organise or retrieve data?

That data use must be necessary. It must be duly considered whether the same statistics could be compiled without collecting or storing additional data or requiring sharing.

APPENDIX

Prepared by Guy Herbert, General Secretary of NO2ID

1. Summary

Buried among the numerous complicated and controversial provisions of this legislation is a single clause, clause 152 in the first draft of the Bill, which is a profound threat to privacy, liberty and the rule of law. It is enabling legislation that converts the Data Protection Act into a machine for massively increasing the dealing by government in information of all kinds. It is designed to allow ministers to use a fast-track regulatory procedure to sweep away data protection, human-rights considerations, confidentiality, legal privilege, and ultra vires when they would stand in the way of any use, acquisition or dissemination of information in pursuit of departmental policy.

The availability of broad data-sharing along these lines would be a profound change in the way the country is governed, potentially altering the function of almost all other legislation. It should not be introduced at all, but certainly not without proper public debate. There has been no such debate.

It would be a disaster if the "information sharing order" (ISO in what follows) were to be successfully smuggled through parliament in this manner.

2. The Bill and NO2ID

The Coroners and Justice Bill contains numerous potentially controversial measures, on most of which NO2ID, as a single-issue campaign group, can have no view. We are concerned about information sharing and privacy in general, and reserve our comments relating to other parts of the Bill where there may be privacy issues involved. This briefing focuses solely on Part 8 of the Bill, which amends the Data Protection Act 1998, and principally on the single clause that creates ISOs. As well as multiplying the powers of all ministers, Part 8 increases the powers of the Information Commissioner. We are not persuaded by this quid pro quo, for reasons explained in section 8 below.

This briefing consists of 9 pages: 9 numbered sections (3pp) of general comments and a 7-page annexe with detailed notes on the legislative drafting. We are happy to discuss any points in it further.

3 The background

Reading the notes provided by the Ministry of Justice to accompany the Bill without prior knowledge of the subject, one might gain the impression that the concept of the ISO somehow springs from the Walport Thomas Review, when in fact that review was set up by the Ministry of Justice in order to re-present the idea of information sharing, which had become somewhat discredited after the HMRC data-disc scandal of November 2007. NO2ID has chronicled the move to ever more arbitrary information sharing powers, since we observed the Children Act 2004 expressly set aside all common-law and statute rules of confidentiality for what eventually became ContactPoint.

The developing philosophy of government by information management that we characterise as "the database state", has become Whitehall orthodoxy without any

systematic public debate, and the ISO should be regarded as the outcome of a desire to manage the citizen centrally as a single file, rather than permit separate relationships with separate organs of state, and of an impatience with mediating institutions such as parliament and the rule of law. In this view, information sharing is seen as one-sidedly good for everyone. This is set out very clearly in a series of official documents on "Transformational Government" (The key ones are exhibited here: <http://www.no2id.net/datasharing.php>).

The Information Sharing: Vision Statement issued by the then Department of Constitutional Affairs in September 2006 identified the main 'barriers' to information sharing as data protection, the Human Rights Act, common law confidentiality, and *vires*.

4 Objections to information sharing provisions in principle

We think that the "barriers" are not random obstacles. They are principles that have evolved in the courts and been captured in statute precisely because they protect things in human life that are worth protecting.

NO2ID set out its views on the principles of information sharing in its evidence to the Walport-Thomas Review. Repudiating the implicit bias of that review, we said:

"There are no intrinsic benefits of data-sharing (which is a name for a wide class of processes or acts, not a coherent thing), and we do not accept the implied trade-off between individual privacy and any generalised social benefit. While all social relationships depend on some form of communication of personal information, data-sharing is purely ancillary to the relationships and individual or collective enterprises it facilitates. ... NO2ID regards privacy and personal control of personal information as primary goods, interfering with which requires specific justification in each case."

The Home Affairs Committee, in its report *A Surveillance Society? (Fifth Report of Session 2007-08)* said much the same thing in more diplomatic language:

"The Government should give an explicit undertaking to adhere to a principle of data minimisation and should resist a tendency to collect more personal information and establish larger databases. Any decision to create a major new database, to share information on databases, or to implement proposals for increased surveillance, should be based on a proven need." (p.7)

We suggest that "proven need" requires direct oversight and scrutiny on each occasion, and that the proper place for the proof of need for a change in the law of the land is parliament. It is not necessary to agree with NO2ID on any particular case to accept that proposition.

The idea of proper oversight and a proven case for extensions of the database state is mocked by the "Henry VIII" clause before the House. Ministers would be enabled to remake the law *ad lib* by regulation; and be subject only to the most flaccid test – whether sharing contributes to the expedient pursuit of departmental policy.

5. Objections to information sharing provisions in practice

It is a truth that 'Information is power'. Arbitrarily extended power is likely to be arbitrarily exercised, and there is little indication that ministers or departments have come to terms with the problems of handling, protecting or properly interpreting huge volumes of information. Every sharing power not only creates potentially oppressive direct use by the authorities (our of error, inadvertence or callousness, more likely than design – see our briefing on the Serious Crime Bill (now Act) for more detail: <http://www.no2id.net/IDSchemes/NO2IDSeriousCrimeBillBriefingFEB2007.pdf>), but also avenues for unauthorised access to information, and therefore identity theft, stalking, or

other persecution of individuals. Most obvious to the public in the light of the November 2007 child benefit records disaster, large scale sharing inevitably means large scale loss. Far from helping the public, as it purports to, joined-up government creates new risks, large costs, and the projected gains in 'efficiency' can seldom be quantified.

At its mildest, information sharing is a recipe for an enormous growth in bureaucratic empires and concomitant IT costs. Even ignoring the costs to liberty and privacy it should be very closely monitored for the sake of the public purse.

6. Information sharing provisions: Objections to process

The government's presentation of the clause 152 provisions is deceptive and disreputable. It is nearly the final clause in a long Bill stuffed with potential controversy. A timetable might well prevent it being discussed in the Commons at all.

It introduces an entirely novel principle and does it in a single clause. Yet all the surrounding language and publicity is designed to minimise the consequences of what is being done. A series of "safeguards" are suggested to be in place. But, examined closely, they are no such thing.

It is noticeable that by making ISOs orders under the Data Protection Act, they will carry the misleading label of "Data Protection" every time they are applied. It is calculated to be deceptive in operation, too.

7. Information sharing provisions: Political objections

Though ISOs are a major change to the way Britain is governed, there is no electoral mandate for them. No attempt has been made to make any argument for them from political principle. None of this has been cleared with the public.

There is reason to believe public opinion is overwhelmingly opposed.

NO2ID asked through ICM in December:

Q. You may have heard that the government intends to collect information about citizens and store it on large computer systems which can then be used for a wide range of purposes. Do you think storing information and sharing it between different parts of government in this way is a... good/bad idea. -- 65% said a bad or very bad idea.

The Sunday Times/YouGov asked more directly in the second week of January:

Q. The Government has announced new data-sharing laws to allow public bodies, including town halls, access to your personal data held by other government bodies. Ministers say this will reduce inefficiencies, while critics say it is in breach of data protection laws.

Do you think this proposal will or will not give the Government too much access to your personal data? -- Will give too much power - 65%; Will not - 19%; Don't know - 17%

The public does not trust government with its personal information. When these proposals become known and understood, there will be anger at the way they have been pushed forward semi-secretly despite all the government's reassurances that more care is being taken after a series of data disasters.

8. Assessment notices and codes of practice

The ISOs will be said to be offset by increases in the Information Commissioner's powers. But nothing in the new powers serves to restrain ISOs themselves. As noted below in the

detailed analysis, the Commissioner has almost no say over the content of ISOs. The increased powers are little constraint on government departments doing what they want with information, because to the extent that the ISO or other statute disapplies them, then the principles of Data Protection simply will not. The need for minute compliance with the letter of Codes of Practice is unlikely to inhibit a public authority. And collectively the civil service has many more staff to generate ISOs than the Commissioner is ever likely to have to assess them.

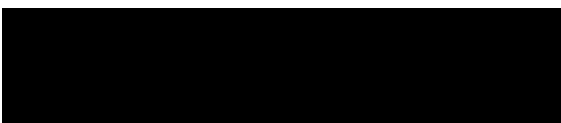
Meanwhile there is just too much work for the Commissioner to do plausibly. Adding to powers is unlikely to make a significant difference when the ICO has limited resources in the first place and is responsible for handling complaints on behalf of the entire country. NO2ID believes that a change to data protection law that grants millions of individuals directly enforceable rights over information pertaining to them is more likely to change corporate and departmental behaviour, than granting punitive power to a limited number of ICO staff.

What is more, issuing guidelines and punishing data controllers for failing to follow them, likely misses the existing defects in the Data Protection Act (the European Commission suggests that it fails to implement as much as a third of the relevant directive correctly). It is irrelevant too to the more substantial problems for privacy and information security that are created by a cult of sharing. What is needed is careful, honest, reassessment of our problem, not window-dressing.

9.NO2ID's recommendations

Information sharing, privacy and data security are all matters of great public concern and profound political importance in an information age. They ought to be openly debated and significant changes made only in the open. Hasty fixes driven by the convenience of officialdom are (even leaving aside all the points above) unlikely to produce anything good. While we could afford to ignore clauses 151, 153, and 154 did they appear by themselves – as so much legislative displacement activity - parliamentarians should demand that the matters covered by Part 8 of the Bill are dealt with openly, in separate, fully timetabled legislation, and should make it absolutely clear that they will not permit such a broad enabling power as the ISO at all. Clause 152 is so dangerous that no conceivable amendment makes it tolerable in a democratic society. It should be struck out.

Guy Herbert
General Secretary, NO2ID
Box 412, 19-21 Crawford Street
LONDON
W1H 1PJ



[Annexe discussing statutory drafting of Coroners and Justice Bill in detail omitted]

Responding to the consultation

Your details

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity.

We will publish our evaluation of responses. Please note that we may publish all or part of your response unless you tell us (in your answer to the confidentiality question) that you want us to treat your response as confidential. If you tell us you wish your response to be treated as confidential, we will not include your details in any published list of respondents, although we may quote from your response anonymously.

Name (optional):

Gayle Gander

Position (optional):

Head of Marketing

Organisation name:

GeoiPlace LLP

Address:

157-197 Buckingham Palace Road

London

SW1W 9SP

Email:

[REDACTED]

Telephone (optional):

[REDACTED]

Would you like us to treat your response as confidential?*

If you answer yes, we will not include your details in any list of people or organisations that responded to the consultation.

No

Is this a personal response or an official response on behalf of your organisation?

Official response

If you ticked “Official response”, please respond accordingly:

Type of responding organisation*

Business

~~**Type of representative group or interest group**~~

~~Union~~

~~Employer or business representative group~~

~~Subject association or learned society~~

~~Equality organisation or group~~

~~School, college or teacher representative group~~

~~Other (please state below)~~

Nation*

England

How did you find out about this consultation?

Gov.uk website

May we contact you for further information?

Yes

Response from GeoPlace LLP

GeoPlace welcomes the publication of this consultation and the way in which the data that we build and maintain can contribute to Government's objective of facilitating data sharing within government.

Our response focuses on how the data we produce can facilitate data sharing rather than providing a detailed response to each of the consultation questions.

About GeoPlace

GeoPlace is a public sector limited liability partnership between the Local Government Association (LGA) and Ordnance Survey. GeoPlace's mission is to create an index of uniquely identifiable land and property records for the public sector. The purpose of this is to enable organisations across the public and private sectors to join information together to support service delivery, such as providing services to troubled families.

Address and street information

The digitisation of services increasingly relies on high quality, interconnected data. Much of it revolves around people and places. Address and street data are important identifiers of places and where people live and work. Local authorities have long recognised the importance of consistent address data for defining places through their land and property gazetteers. The address and street gazetteers become nodes for linking vast amounts of data within and between authorities and other organisations.

GeoPlace has worked with local authorities for many years, to understand the potential of the address and street gazetteers and to use the Unique Property Reference Number (UPRN) as a common identifier. The UPRN links data from a diverse range of systems and services to relate them to the same place, property, person, business or service. Bringing data together through a common reference

dataset such as the gazetteers saves money by avoiding duplication and providing linkages quickly and efficiently.

Linking this information helps to understand what services people need and where. - For example a vulnerable person needing special support in an emergency. The recent floods demonstrated the power of data to link information about flooded properties and residents' needs, and highlighted the impact on business and livelihoods. Data does not replace individual stories, but it helps to assess, coordinate and deliver support and help quickly.

Being able to access a definitive address list from one central place allows organisations to readily exchange information with each other, streamline services, reduce duplication and facilitate partnership working.

The UPRN

The UPRN and Unique Street Reference Numbers (USRN) are centrally created unique keys for each land and property record and street record across Great Britain.

All UPRNs and USRNs are contained with the National Address Gazetteer. The National Address Gazetteer infrastructure is the data storage and set of processes bringing together the existing local authority sourced addressing and street datasets together with Ordnance Survey, Valuation Office Agency and Royal Mail data. Through agreement between Ordnance Survey and Scotland's Improvement Service, working on behalf of Scottish Local Government, the National Address Gazetteer includes Scottish address data. The National Address Gazetteer is the single source from which the AddressBase products are developed.

AddressBase is available free at the point of use from Ordnance Survey for the entire public sector, including organisations working on behalf of the public sector, under the Public Sector Mapping Agreement (PSMA) and One Scotland Mapping Agreement (OSMA).

The UPRN allows organisations to more effectively collate and share information based on a common reference, even if there are issues with other reference text associated with a record. Many technologies can be used to link and share data, including spreadsheets, databases, XML/GML schema and linked data – all of which can be underpinned by use of the UPRN for spatial address information in Great Britain.

Using the UPRN means that organisations can continue to hold their address information in their existing formats but, by adding a single field containing the UPRN, it becomes possible to link matching records in different databases together.

The UPRN is used in business critical systems across the public sector and increasingly private sector. Many examples exist of its use, particularly within local government and the fire and rescue services. The USRN underpins street works noticing and is used at the heart of street information systems within local Highway Authorities. Working towards the adoption of the UPRN and USRN in all future government to government data sharing activities would provide significant opportunities for data sharing.

Questions

Improving public service delivery

Question one: Are there any objectives that you believe should be included in this power that would not meet these criteria?

No

Yes

If yes, please explain your reasons.

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Question two: Are there any public authorities that you consider would not fit under this definition?

No

Yes

If yes, please explain your reasons:

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.....
.....

Question three: Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your reasons:

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.....

Question four: Are these the correct principles that should be set out in the Code of Practice for this power?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your reasons:

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.....

Providing assistance to citizens living in fuel poverty

Question five: Should the government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

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Question six: Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

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Question seven: Are there other forms of fuel poverty assistance that should be considered for inclusion in the proposed power?

Yes

No

If yes, please explain your reasons:

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.....

Access to civil registration information to improve public service delivery

Question eight: Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your reasons:

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Question nine: Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified

public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to a deceased person)?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please explain your reasons:

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Combating fraud against the public sector through faster and simpler access to data

Question ten: Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

- Yes
- No

Please explain your reasons:

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.....

Question eleven: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed?

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Improving access to data to enable better management of debt owed to the public sector

Question twelve: Which organisations should government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtor who owe multiple debts?

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Question thirteen: How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

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Question fourteen: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed??

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Access to data which must be linked and de-identified using defined processes for research purposes

Question fifteen: Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

Yes

No

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Question sixteen: To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Yes No

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Question seventeen: What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

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Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

Question eighteen: Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

Yes

() No

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Question nineteen: If your business has provided a survey return to the ONS in the past we would welcome your views on:

a) the administration burden experienced and the costs incurred in completing the survey

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b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics

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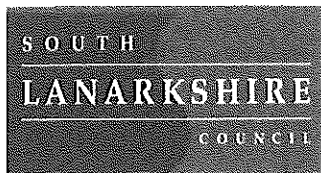
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Question twenty: What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to the processes that collect, store, organise or retrieve data?

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Finance and Corporate Resources
Executive Director Paul Manning
Administration and Legal Services
Head of Administration and Legal Services Geraldine McCann

Better Use of Data in Government
consultation 2016,
Government Digital Service,
6th Floor, Aviation House,
London
WC2B 6NH

Our ref: GMC/ME
Your ref:
If calling ask for: Geraldine McCann
Phone: [REDACTED]
Date: 22 April 2016

By email: data-sharing@cabinetoffice.gov.uk.

Dear Sirs

"Better Use of Data in Government" Consultation Response

I refer to the Cabinet Office's ongoing consultation "Better Use of Data in Government" which acknowledged that information is the key to sound decision making and efficient operations for all organisations. It set out proposals to support

- (a) the delivery of better targeted and more efficient public services to citizens and
- (b) better research and official statistics to inform better decision-making.

I enclose a response from South Lanarkshire Council for your consideration.

In preparing this response, the Council noted that in particular the proposals would be underpinned by the following key protective principles:-

- no building of new, large and permanent databases, or collecting more data on citizens (However, it is suggested by the Council that this definition should specifically exclude systems such as master data management bases where data is used in a manner to facilitate the better provision of services to members of the public and others without being unduly intrusive)
- no indiscriminate data sharing within Government (in its widest public sector meaning – including local government in Scotland)
- no amending or weakening of the DPA; and
- safeguards that apply to a public authority's data once it is disclosed to another public authority.

In summary the Council

- a) supports the objectives and principles as set out within the consultation particularly that there should be no punitive effect on individuals

Floor 13, Council Offices, Almada Street, Hamilton ML3 0AA



[Handwritten mark]

- b) notes that the safeguards within the DPA are not being weakened in any way and, in fact, further measures such as the creation of new criminal offences in relation to misuse of shared information are to be welcomed
- c) makes it clear that there may be a requirement for the involvement of the devolved Scottish Parliament/Ministers in relation to some of the measures and that there may be at times a need to ensure that appropriate legislation is used (particularly in relation to the definition of fraud which uses legislation that does not apply to Scotland) and
- d) suggests areas where clarification of matters in respect of the legal position may be necessary.

Yours faithfully



RP **Geraldine McCann**
Head of Administration and Legal Services

Responding to the consultation

Your details

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity.

We will publish our evaluation of responses. Please note that we may publish all or part of your response unless you tell us (in your answer to the confidentiality question) that you want us to treat your response as confidential. If you tell us you wish your response to be treated as confidential, we will not include your details in any published list of respondents, although we may quote from your response anonymously.

Name (optional): Geraldine McCann

Position (optional): Head of Administration and Legal Services

For and on behalf of

Organisation name: South Lanarkshire Council

Address: Council Offices,

Almada Street,

Hamilton,

ML3 0AA

Email: 

Telephone (optional):

Would you like us to treat your response as confidential?*

If you answer yes, we will not include your details in any list of people or organisations that responded to the consultation.

No

Is this a personal response or an official response on behalf of your organisation?

Official response

If you ticked "Official response", please respond accordingly:

Type of responding organisation*

Local authority

Type of representative group or interest group

- Union
 - Employer or business representative group
 - Subject association or learned society
 - Equality organisation or group
 - School, college or teacher representative group
 - Other (please state below)
-

Nation*

Scotland

How did you find out about this consultation?

Other

May we contact you for further information?

Yes

Questions

Improving public service delivery

Question one: Are there any objectives that you believe should be included in this power that would not meet these criteria?

Yes

If yes, please explain your reasons.

The Council notes and agrees with the two specified objectives but with regard to firsts protective principle “no building of new, large and permanent databases, or collecting more data on citizens” it suggests that this definition should specifically exclude systems such as master data management bases where data is used in a manner to facilitate the better provision of services to members of the public and others without being unduly intrusive).

The Council would also highlight that in order to take forward the principles in Scotland in some cases new or amending legislation will be required. However, the Council appreciates that, as a Scottish public authority, this would be subject to discussions with the Scottish Government.

Question two: Are there any public authorities that you consider would not fit under this definition?

Yes

If yes, please explain your reasons:

The Council agrees that the definition of “public authority” in connection with the addition of bodies within the proposed Schedule is appropriate and does not require further amendment. It is believed that if the focus is on improving public service delivery then it must apply to all those bodies providing such services and that they must meet the same terms & conditions as that which apply to public sector bodies.

It cannot see any justification for the inclusion of any organisations or bodies that have not been already included in the proposed Schedule or possibly being added to that Schedule.

The only comment that the Council would wish to make is in regards to the possible resolution of uncertainty in relation to the sharing of the information held for different functions within the Council. It is noted that the draft clauses refer to the transfer of information between public bodies but is mute in relation to any internal transfers. This may be an opportunity to specifically allow for the internal transfer or sharing of information subject to the transfer or sharing meeting the stated objectives.

Question three: Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

Strongly agree

Please explain your reasons:

The Council is of the view that “non-public sector” bodies should be included in the scope of the power where they are discharging functions of a public nature. It is believed that if the focus is on improving public service delivery then it must apply to all those bodies providing such services and that they must be subject to the same safeguards that apply to “classical” public sector bodies.

Question four: Are these the correct principles that should be set out in the Code of Practice for this power?

Neither agree nor disagree

Please explain your reasons:

The Council notes the importance of accountability and justification of use of personal information to individuals and that this is usually achieved through the seeking of consent. However, it is suggested that this should not necessarily apply where that seeking of consent would unwarrantedly prejudice the benefit that would accrue to the individual or others. In such cases, there must be safeguards put in place to protect the individuals concerned and the Council supports the measures proposed within the consultation.

Consequently, the principles seem appropriate. The only additional comment that the Council would wish to make is that it might be helpful to spell out not just the additional safeguards but also the existing ones that will apply to reassure people and not just assume that these are known or understood.

Providing assistance to citizens living in fuel poverty

Question five: Should the government share information with non-public sector organisations as proposed for the sole purpose of providing assistance to citizens living in fuel poverty?

Strongly agree

Please explain your reasons:

The Council agrees that Government should have the power to share information with non-public sector organisations in respect of citizens in fuel poverty provided that there are no negative implications on the individuals concerned.

Question six: Would the provision of energy bill rebates, alongside information about energy efficiency support, be appropriate forms of assistance to citizens living in fuel poverty?

Agree

Please explain your reasons:

In addition to these supports it would also be beneficial to give consideration to the metering arrangements/energy tariffs available to citizens who are fuel poor to ensure that they are not financially disadvantaged by them.

Question seven: Are there other forms of fuel poverty assistance that should be considered for inclusion in the proposed power?

Yes

If yes, please explain your reasons:

The earlier indicated areas are seen as being the crucial ones – the key is perhaps not to seek to cover every eventuality but to be clear about the overarching safeguard and confidentiality restrictions that apply to this use.

Access to civil registration information to improve public service delivery

Question eight: Should a government department be able to access birth details electronically for the purpose of providing a public service, e.g. an application for child benefit?

Strongly agree

Please explain your reasons:

The Council considers that, in principle, a government department (as defined within the list of “specified public authorities”) should have this power. It is suggested that this could be expanded to include the consideration of the sharing of information in respect of grants and other assistance that may be offered to entitled individuals (where the records of that qualifying entitlement are held by another service within the Council). Whilst the issue about additional objectives is not part of the matters on which the consultation sought views, the Council wish to raise this possibility within its response to the consultation.

However, it notes that, as a devolved Scottish public authority, any similar change in legislation would be subject to devolved legislative procedures.

Question nine: Do you think bulk registration information, such as details of all deaths, should be shared between civil registration officials and specified

public authorities to ensure records are kept up to date (e.g. to prevent correspondence being sent to a deceased person)?

Strongly agree

Please explain your reasons:

Subject to its previous comment, the Council supports the principle of sharing information to the benefit of individuals such as in the example given.

Combating fraud against the public sector through faster and simpler access to data

Question ten: Are there other measures which could be set out in the Code of Practice covering the proposed new power to combat fraud to strengthen the safeguards around access to data by specified public authorities?

Yes

Please explain your reasons:

The Council is supportive of the principle of measures in relation to the protection of public monies against fraud. However, it notes that the definition of "fraud" as expressed in relation to the draft clauses refers to legislation e.g. the Fraud Act 2006 which does not apply in Scotland and that the definition of "fraud" within Scotland is potentially different than that definition. There does not appear to be any definition of "fraud" as it applies in Scotland. It may be necessary to consider how any inconsistencies in the definition could be remedied in order that all public bodies within the UK would be operating using the same criteria.

The Council is also of the view that this may be an opportunity to consider any restrictions (perceived or otherwise) on use of information or data sets held by the Council in relation to other functions but which would also serve the purpose of the detection etc of fraud against it such as an arguable restriction on the use of information contained within the Council Tax Register. This again is subject to the devolution of powers.

Question eleven: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed?

The Council believes that, given the practicalities of embedding projects in order to ensure that they are functioning as intended that a period of 5 years would be appropriate.

Improving access to data to enable better management of debt owed to the public sector

Question twelve: Which organisations should government work with to ensure fairness is paramount when making decisions about affordability for vulnerable debtor who owe multiple debts?

The Council is of the view that Government should identify and consult with all stake holders in relation to the recovery of debt. This should include organisations that are likely to represent, advocate for or advise people in relation to debt issues but also those to whom the debt is owed. In doing so, the Government will be able to strike the correct balance of conflicting interests and so ensure fairness to all stake holders in the process.

Question thirteen: How can Government ensure the appropriate scrutiny so pilots under the power are effectively designed and deliver against the objectives of the power?

The Council suggests that it would not be possible to apply a standard scrutiny process in relation to timescales and levels of scrutiny to pilots (though the matters set out in paragraph 92 of the consultation document appear to be appropriate).

Question fourteen: It is proposed that the power to improve access to information by public authorities to combat fraud would be reviewed by the Minister after a defined period of time. This time will allow for pilots to be established and outcomes and benefits evaluated. How long should the fraud gateway be operational for before it is reviewed??

The Council suggests that this period should be 5 years.

Access to data which must be linked and de-identified using defined processes for research purposes

Question fifteen: Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

Yes

It would seem appropriate for public authorities to be able to impose a fee on a costs recovery basis.

It might be appropriate to impose a duty on researchers in respect of making the outcome of their research available to those bodies whose data has been accessed.

Question sixteen: To ensure a consistent approach towards departments accepting or declining requests for disclosing information for research projects, should the UK Statistics Authority as the accreditation body publish details of rejected applications and the reasons for their rejection?

Yes

This would seem appropriate.

Question seventeen: What principles or criteria do you think should be used to identify research that has the potential for public benefit, or research that will not be in the public benefit?

The use of the Statistics & Registration Services Act 2007 would seem appropriate – provided that it covers the devolved administrations and that it is clearly understood that any changes must ensure that the legislation is not changed in any way that results in a lack of legislative competence in the devolved administrations.

Access by UK Statistics Authority to identified data for the purpose of producing official statistics and research

Question eighteen: Is two years a reasonable maximum period of time for the duration of a notice for the supply of data to the UK Statistics Authority for the purposes of producing National and official statistics and statistical research?

Yes

This seems appropriate.

Question nineteen: If your business has provided a survey return to the ONS in the past we would welcome your views on:

a) the administration burden experienced and the costs incurred in completing the survey

The main survey return that the Council makes to ONS is in relation to the BRES survey and it believes that the administrative burden and costs this places on the Council is acceptable.

b) ways in which the UK Statistics Authority should seek to use the new powers to further reduce the administrative burdens on businesses who provide data to the ONS for the purposes of producing National and other official statistics

In respect of the UK Statistics Authority, consideration may need to be given to ensure that its statutory remit is enhanced to go beyond its current focus on the

production and publication of official statistics to also cover the purposes that underlie this consultation.

Question twenty: What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to the processes that collect, store, organise or retrieve data?

The Council supports the move towards the adoption of the standards of Open Data and that information should be available in an open format. Further the adoption of appropriate and consistent metadata should be encouraged. However, the Council is minded of the cost and resource implications in doing so.



19 April 2016

Data Sharing Policy Team
Cabinet Office
Floor 6, Aviation House,
London
WC2B 6NH

By email: data-sharing@cabinetoffice.gov.uk

Dear Data Sharing Policy Team

Better use of data consultation paper

The Royal Academy of Engineering welcomes the Cabinet Office consultation on *Better use of data* and the opportunities that will arise for improved policymaking and service delivery as a result of greater powers to share data, along with the expansion of the application of data science techniques and the use of new technologies as platforms for sharing data.

We support the proposal to allow the Office for National Statistics to access detailed administrative data from across government and business in a transparent and secure way, and recognise the value of high quality and timely official statistics and statistical research. We also support access by researchers to data held by public authorities in a controlled way that minimises the risks to individuals or organisations of being identified.

The Academy welcomes the principles that the Cabinet Office is applying in the formulation of powers, namely that data sharing should be proportionate, secure and well-governed. Individuals in the public agencies involved will need good data management and stewardship skills to maintain privacy of public data and ensure that systems are secure.

While the specific questions in the *Better use of data* consultation paper go beyond the scope of our work on data, we would like to draw your attention to *Connecting data: driving productivity and innovation*¹, a joint report between the Royal Academy of Engineering and the IET. The report was published in November 2015 and explores how the UK can create a 'data-enabled economy'.

Connecting data: driving productivity and innovation illustrates how sharing data across sectors in innovative ways opens up new opportunities for improved products and services, leading to increased value generation. This applies to the sharing of administrative data between public agencies, proprietary data between private companies, and the sharing of data

¹ The Royal Academy of Engineering and the IET (2015), *Connecting data: driving productivity and innovation*, <http://www.raeng.org.uk/publications/reports/connecting-data-driving-productivity>

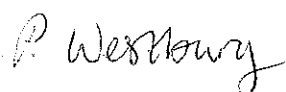
between public and private organisations. The latter has the potential to unlock value by improving both business and government practice². While the current powers cover data sharing by public authorities and researchers within and outside government, in future additional value could be generated by allowing private bodies to access public-sector data for commercial purposes with suitable security and privacy controls.

The report also emphasises that opening up datasets does not in itself create value, but that the ability to link datasets reliably generates value. For example, datasets may be particularly valuable if they enable correlation and validation (triangulation) of data. The value of sharing data can only be realised if the problems of data anonymity and data security are addressed by filtering data to preserve anonymity or sharing only the necessary parts of the data. The 'Trusted Third Party Model' recommended by the Administrative Data Taskforce is an example of this, and *Connecting Data: driving productivity and innovation* provides further examples of data sharing by means of Application Programming Interfaces³. Value also depends on the timeliness of data; thus the creation of legal gateways to speed up access to data by public bodies is critical.

The initial objectives proposed for data sharing, that include fuel poverty assistance, identification of families for the Troubled Families programme, and tackling fraud and debt, will allow the benefits of sharing data to be demonstrated, and further objectives to be added with greater confidence at a later date. We emphasise the importance of handling these datasets in such a way that they build public trust, and providing transparency in how data is shared. The ethics around data sharing is an evolving area, including how it applies to the results of combining different datasets so that 'new' information about an individual is created. In future new ethical frameworks⁴ will emerge based on new information about how data is shared in practice and what the consequences are, whether positive or negative. This could require codes of practice to be revisited at a future date.

The Royal Academy of Engineering is currently following up recommendations from *Connecting Data*, including a roundtable discussion on **Data as an Asset** on Thursday 28 April, 10.00-12.30. This roundtable aims to explore how value can be generated from data, including through linking datasets. If you would like to join the roundtable, or to follow up on the points in this letter or the *Connecting Data* report, please do get in touch.

Yours sincerely



Dr Philippa Westbury
Policy Advisor

² McKinsey and Company (2013), *Open data: unlocking innovation and performance with liquid information*. www.mckinsey.com/insights/business_technology/open_data_unlocking_innovation_and_performance_with_liquid_information

³ See Case studies on page 26 of *Connecting data: driving productivity and innovation*.

⁴ For example, *Connecting data: driving productivity and innovation* cites: Chessell, M. (2014), *Ethics for big data and analytics*, IBM – this paper describes an ethical framework for organisations that describes the different aspects of the implications of using big data.

BIG BROTHER WATCH

DEFENDING CIVIL LIBERTIES, PROTECTING PRIVACY

Better Use of Data - Big Brother Watch Response

April 2016

About Big Brother Watch

Big Brother Watch is a civil liberties and privacy campaign group that was founded in 2009. We have produced unique research exposing the erosion of civil liberties in the UK, looking at the dramatic expansion of surveillance powers, the growth of the database state and the misuse of personal information.

Specific to this inquiry we have produced research into breaches of data protection in local government, police forces and the NHS. We have also submitted written evidence on the threats to personal data to the Science and Technology Select Committee and the care.data programme to the Health Select Committee as well as giving oral evidence on the subject to a number of committees.

Big Brother Watch participated in the Open Policy Making process that preceded these proposals.

Response:

Big Brother Watch has profound concerns with the consultation document. Answering the specific questions posed is difficult until the broader issues are resolved. We therefore have chosen to address these broad concerns at this stage.

The consultation states in paragraph 13 that *"A complex patchwork of data sharing laws has grown over time."* It goes on to say that *"we need to go further and update the legal regime to provide simple and flexible legal gateways to improve public sector access to information."* However, we believe that the broad range of proposals outlined in the consultation document will not fulfil that brief and indeed, will, without careful consideration, extend the "complex patchwork" even further.

Whilst data sharing is presented as a benefit or a solution, many of the benefits given as examples in the document could be achieved through organisational restructuring and improved communications between departments, rather than installing a complex web of data sharing powers.

Definitions

Our overarching concern is that there is no definition of what is meant by *"data sharing"*, what is meant by *"public data"* or what is meant by *"private data"*.

It is unclear if data sharing means for information to be copied from one system to another, or if it will be held in one system and be made available to people requesting access. It is also unclear that if it is held in a database whether the entire database would be available or just certain parts of it. These are basic questions of which there appears to be no answer.

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For every explanation of the problem in the document, no solid solution is given. A hotchpotch of ideas has been published. They all sound very interesting but rarely if ever detail what the proposed solution will be, how it will work and what the technical capability will be required to ensure its smooth running.

It may have been more beneficial to have published one clearly defined idea with the intention of developing it further before endorsing it as a blueprint for data sharing as a whole across government departments.

Data Protections, risk analysis and security provisions

The UK is on the brink of becoming digital by default. Over the next 20 years all citizens will be required to have a digital profile. Data protections, privacy protections, data control and informed consent will all become fundamental to ensure the smooth working of a digital data driven society. However the consultation document gives no indication that those future necessities have been adequately considered. The concepts of privacy and security by design appear to have been added as a tick box exercise under the key protective principles, rather than as a beneficial philosophy that underpins the process in a meaningful way.

The document does acknowledge some concern in this area but it does not provide a coherent outline of a solution. For example the *Risks of Data Sharing* section acknowledges that sharing personal information can potentially be dangerous but there is no detailed analysis of the risks or plans to ensure they don't become realities. The perceived benefits of having a digital birth certificate for ease of claiming benefits is also outlined, but again there is no attempt to explain how this data would be protected from hacking, loss, breach or the myriad of other cybercrime concerns. We are instructed that digital certification will help reduce fraud but there is no acknowledgement that storing this information could also present dangers to personal information. It could be argued that without clear definitions and without a clear approach to how all individuals; the public, the official, the researcher etc., will identify themselves, the risk of fraud or identity theft is potentially enormous.

The lack of specific detail on security arrangements to protect the personal data during acquisition, retention and during transit for sharing purposes is also a very serious omission. Detailed information outlining proposals for encryption and whether or not systems of access controls and user authentication will be put in place would have been instructive.

We welcome the references to key protective principles, Trusted Third Party models and privacy impact assessments but note that these are mentioned or suggested as possible privacy/security methods rather than clearly adopted or described as a basic structure to the proposed powers.

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Strategy

It is unclear why a single implementation framework hasn't been suggested instead of the wide range of different approaches found in the document. This risks adding an unnecessary layer of complication to the scheme.

Of all the proposals outlined, those for fraud and debt appear to be the most coherent in terms of strategy. As a starting point the proposal for a pilot phase to ascertain what benefits could be established or indeed gained is sensible. It is also sensible for any permanent scheme to only be implemented after the results of the pilot phase have been analysed, and for an open, public review to take place.

These ideas are a good start, but frankly we would have hoped that two years on from the creation of the OPM these ideas would have been adopted more widely and would have been used as a backbone of privacy and security by design across all proposals in the scheme.

Data awareness

Increasingly, due to greater engagement with new data driven and connected technologies, people will begin to acknowledge and care about who holds their data, for what reason and for how long. The introduction of the General Data Protection Regulations (GDPR) will emphasise that controls on data will have to become more explicit. It is likely that what is outlined in paragraph 8 of the Government's Technology Code of Practice, that "*Users should have access to, and control over, their own personal data*" will be the method for all data access in the future.

The GDPR will make it necessary for all citizens to be told exactly what is happening at the point of collection as well as in the future, with their personal information. This includes who will subsequently have access to it and who it may be shared with, additionally the need for explicit informed consent to be given will be emphasised.

It should never be assumed that if a citizen gives permission for data to be used for one purpose that they give carte blanche for it to be used for any other purpose, even if the purposes stem from the same department which they have provided the data to.

An example of what can happen if proposals for data sharing are not properly communicated beforehand is the well-publicised failure of the care.data programme.

NHS England's awareness campaign was widely criticised as ineffective and a key piece of information; precisely who the medical records of citizens would be shared with was not made clear to the public. As a result of this the scheme was put on hold.

If the Government wants to avoid similar issues it must be upfront and clear with citizens about the need for certain information and what it will be used for.

It should be remembered that the burden of proving need for data will be with the Government, not the individual.

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Codes of Practice

We are informed that two Codes of Practice will be drafted, one to cover the proposals on research and statistics and the other "*to cover the other provisions*". However these have not been published.

It is worrying that such important and fundamental elements such as "*principles for the use of the power*" and "*additional safeguards*" are not outlined in anyway in the consultation document.

Furthermore that they are to be buried in a yet to be written and published Code of Practice rather than on the face of any future legislation is of great concern.

The consultation promises that transparency will be "*a key principle that will apply to each of the Codes*". This is undermined by the fact that neither has been published as part of the consultation.

Future legislation

Based on what has been presented in the consultation document we have serious doubts that the proposals are even close to being drafted as future legislation.

We would recommend at the very minimum, a more considered approach. An approach which outlines definitions, gives clarity of the purpose, provides a clear structure as to how the scheme would work technically and outlines how security of data, privacy of data and individual control of data will be achieved:

Ultimately if the problems which the scheme intends to solve, can be solved without the need for data acquisition, retention and sharing, we would recommend that effort is put into addressing those methods rather than seeing promises of big data sharing as the only solution.

Overview

Making the Case for Data Sharing in the Public Sector

- EMC recognises better use of data will be fundamental to public service innovation in the future. In 2012 we worked with Policy Exchange to evaluate the potential savings for central government of enhanced data analytics in The Big Data Opportunity. The report highlighted just how much data the public sector holds, HMRC having 80 times more data than the British Library, and therefore what a fantastic opportunity there is for better analytics to underpin smarter government.
- It estimated that smarter use of data would improve overall efficiency for government by up to £16 to £33 billion a year. This figure excluded the equally significant opportunities for health and local government. Since then we have continued to raise awareness of the potential applications of advanced data **analytics, working with partners to focus in on specific sectors, defence and health.**

Establishing Trust

- In addition to investing in the skills and technology infrastructure needed, addressing trust and promoting a clear understanding of the longer term public benefits, will be absolutely critical for getting not only the public, but also public sector leaders on board. In September 2015 we published a new report on the Future of Government Digital Services which found that 45% of citizens are not happy to have their data shared with or across areas of the public sector in any scenario. This is clearly going to be a serious barrier to improved data sharing and needs to be tackled head on with a **Code for Responsible Analytics** (or some form trust mark), which was put forward in Policy Exchange's Big Data Opportunity report and then again in the Technology Manifesto, to enable informed choices about data use.

Leadership and Incentives

- The UK is already regarded as a world leader in developing digital public services. We see a huge opportunity to become a world leader in adoption of public sector data analytics. We hope ultimately this consultation is pointing towards a pan-government **Public Sector Big Data Strategy** that sends a clear signal to the public and private sector.
- At the moment digital leaders across the public sector are some way from realising those opportunities. EMC welcomes this Consultation in the hope that getting successful data projects around fuel poverty and identifying families with complex problems as well as improving statistics. But we also hope at a wider strategy emerges soon.
- We have experience of working with public sector bodies to set up data sharing projects, which we would be happy to share with you. What we found is that senior leadership consensus around the benefits and tackling the trust issue will be essential to make projects work and to incentivise public and private investment.

Setting the Boundaries

- We believe citizens' data should only be shared where there is a demonstrable benefit to the public – not for commercial gain of a private company or other third party. And on a practical level, data sharing should only occur in a secure and trusted way with citizens' consent.
- To enable these outcomes, there should be strong safeguards and standards around how citizens' data can be used, what permissions must be sought, how access will be protected and audited, and what sanctions will be in place if these measures are not followed.
- To ensure consistency, we would like to see a single framework for data sharing across the whole of the public sector addressing all these issues. This framework should be overseen by a single, powerful body providing joined up oversight and governance over data sharing in the public sector. EMC believes the system now present in the health sector, where 'Caldecott Guardians' in each NHS organisation are responsible for protecting the confidentiality of patient and service-user information, enabling appropriate information sharing, and overseeing Privacy Impact Assessments, could provide a good template for this.
- Ultimately any new framework needs to be well understood throughout the public sector and communicated widely to the public from the outset.

Responses to consultation questions

Improving public service delivery

Q1. Are there any objectives that you believe should be included in this power that would *not meet* these criteria?

EMC agrees with the three objectives for data sharing in the public sector outlined in paragraph 39 of this consultation.

Think-tank Policy Exchange identified very similar benefits to be gained from the public sector pooling, sharing and analysing data sets in their 2012 report *The Big Data Opportunity* which EMC supported. This report found that big data analytics could save the public sector between £16 billion – £33 billion per annum, and help deliver more responsive, smarter, and more personalised services. One of the key ways data sharing and analytics enable this is by providing managers with real-time information on the performance of key services, allowing opportunities to reduce waste and increase efficiency to be identified. And by using cutting-edge data visualisation tools, Ministers and their advisers could have access to real-time, interactive facts and figures on public sector performance. **EMC believes data sharing for these purposes should also be allowed to fully realise the potential benefits of data analytics.**

Q2. Are there any public authorities that you consider would not fit under this definition?

None

Q3. Should non-public authorities (such as private companies and charities) that fulfil a public service function to a public authority be included in the scope of the delivering public services power?

In general, EMC believes data sharing and analytics can bring huge benefits to the public sector, and should be embraced. But to ensure public trust, EMC agrees there need to be strong safeguards and Ministerial oversight over how these powers are used.

In relation to the use of analytics, EMC is clear that the Government should support the development of a Code for Responsible Analytics to ensure adherence to the highest ethical standards in the use of data and analytics, as set out by Policy Exchange in their 2012 report *The Big Data Opportunity*.

In relation to data sharing, EMC believes this should only take place for a clear and demonstrable public benefit, and not for private or commercial gain. While private and third sector organisations carrying out work on behalf of a public body will need to also have access to relevant data, they must also be subject to the same restrictions, level of scrutiny, and sanctions, including prosecution in the event of abuses, as public bodies in relation to their use of data.

To complement this there needs to be a clear plan for communicating issues related to data sharing to the public. This needs to ensure citizens understand the positive difference the sharing of their data is making, to both public services and society as a whole, as well as them as individuals. Citizens also need to understand the rules and safeguards that are in place around their data, to ensure they have confidence in the system and are comfortable with their data being shared.

Q4. Are these the correct principles that should be set out in the Code of Practice for this power?

EMC believes the principles for the Code of Practice on data sharing set out in paragraph 44 of this consultation are broadly correct.

The Code of Practice must strike a balance between enabling data sharing and innovation, while ensuring security and trust. It must also clarify areas of ambiguity in the current system. Fear of prosecution by the Information Commissioner's Office has resulted in organisations defaulting to a 'share nothing' approach, regardless of the benefits to citizens. For example, the current bar on data sharing unless for a specific, consented purpose prohibits experimentation and the development of business cases – in other words, a chicken and egg situation.

To be effective, the Code of Practice must be accompanied by a strong political imperative around sharing and innovating with data and so it eventually becomes core to civil servants' mind-set and job description.

Key components of a business case

In our experience, one of the key challenges for civil servants looking to use data in innovative ways will be to build a robust business case. We would therefore like to see significant guidance and support provided to help with this.

Training and mentoring should be provided to help officials develop the key components of a business case. Also the private sector should be encouraged to engage and support in this process, along with academics through the Research Councils. The process needs to be collaborative from the outset. This will help private organisations get a better understanding as to what government bodies need so that they can develop new systems independently and bring new ideas and innovation in to the workplace.

A good business case in our view will include an assessment of how the proposed data analytics project could:

- Reduce risk of incurred overspend or additional unwanted cost
- Support the organisation in meeting its mandatory requirements
- Improve citizen experience and services received
- Enhance the organisations' record for delivery
- Generate better targeting of resources

Even with the best business case though, unless this has had the sign off of senior leaders and other relevant organisations that will be involved and impacted, projects risk stalling or being delayed at the outset.

Financial Incentives

Financial frameworks will need to be put in place for different public sector organisations to collaborate, invest and scale up, without charging for public data.

- Will collaborating organisations be offered the opportunity to sell their services to other parts of the public sector or should smarter use of data become a general requirement for all?
- How can central leadership intervene to avoid 'reinventing the wheel'?

These are critical questions that in our view need to be addressed from the outset.

Financial incentives to encourage and reward experimentation and innovation with data should be introduced. For example, a **Big Data Innovation Fund** could be accessed to kick start projects; on the basis that funding would be recouped with savings set out in the business case.

To encourage exploration a 'digital sandbox' could be created along with tools to create anonymised datasets and enable any public sector body to undertake data analytics. This would allow experimentation and the development of business cases to take place in a safe environment.

And to avoid organisations wishing to innovate with data having to start from scratch we would recommend a central library of proven business cases available for all. For example, if a business case to manage and reduce preventable events in the healthcare sector using software solutions is developed, how can this be replicated across other parts of health without reinventing the wheel? Regulatory change enabling a business case developed by one organisation to be re-used by another wanting to share and use data in a similar way would be needed.

Information governance

As part of its provisions for 'Additional Safeguards' to support data sharing, EMC also believes the Code of Practice should cover the information governance arrangements public bodies wishing to share citizen data need to have in place in order to address public concerns over privacy, security, and ownership of data. We believe the key features of such a framework should include:

- Viewing information governance as an enabler for information sharing, research, and improving the delivery of public services;
- Ensuring dynamic and skilled leadership within each organisation, including a Director at Board level, who is formally responsible for information governance and who can oversee the safeguarding of personal confidential data (similar to the system of Caldecott Guardians now present in the health sector);
- Developing clear policies, processes, access control protocols, and ways in which to get appropriate levels of support proactively applied;
- Harmonising and consistently applying guidance and processes across the organisation to enable staff to feel confident in applying them appropriately in a manner that helps to develop a dynamic and innovative environment;
- Ensuring that everyone working with personal confidential data is aware of and understands their responsibilities. This should be delivered through audited training linked to financial penalties for failures to comply;
- Publishing in a prominent and accessible form, information to let the public know what data sharing is taking place, why and what it means to them as individuals.

Access to data which must be linked and de-identified using defined processes for research purposes

Q15. Should fees be charged by public authorities for providing data for research purposes, and if so should there be a maximum fee permitted which is monitored by the UK Statistics Authority?

In general, we agree with the principle that public data should be freely available and accessible by other public bodies – if used for a demonstrable public benefit. Private sector organisations wanting access to public data sets in order to gain a financial benefit should pay for this access however. The value could be determined by the level of detail requested.

We recognise that there will sometimes be costs involved in collecting, storing, and analysing data, which will sometimes be incurred by one public body, while another will benefit from this data being shared with them. To solve this conundrum there should be incentives for public sector bodies to invest internally to be able to take

advantage of the data they hold and enable the appropriate and secure sharing of data with other public bodies.

Q20. What principles and factors should be considered in preparing the Code of Practice on matters to be considered before making changes to processes that collect, store, organise or retrieve data?

Building on our answer to Question 4, we believe the Code of Practice needs to take account of likely future developments in machine learning and automation which will enable data to be collected, shared and analysed without human intervention. Again, ensuring the public understand how their data is being used by such machine learning and automated technologies, and what their rights are in relation to providing or withholding consent, or questioning or challenging decisions taken by automated systems, will be essential to ensure transparency and trust.

ENDS