

BAR STANDARDS BOARD

Dear Lord Evans,

Thank you for your letter of 25 November, in which you invited the BSB to provide a brief progress update on how we are considering and responding to the impact of Artificial Intelligence at the Bar.

In 2019 we published our Risk Outlook 2019¹, this is a document we produce every three years, alongside our strategic plan, which considers what the big risk themes might be over the period of the planning cycle. Theme 2 relates to the risks and opportunities that can be found in the use of innovative technology (including AI) across legal services. The Outlook set out our role as continuing to *“work closely with the profession to ensure we understand the risks and opportunities arising from the changes we have identified. The BSB needs to gain insight into these areas and will seek to build good relationships with subject matter experts. Where necessary, we will act quickly to mitigate the risks, but will also work to enable the profession to adapt and hence take advantage of the opportunities described here. We can do this by keeping our rules flexible to facilitate innovation.”* Our response to your questions reflects this position.

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

Yes. We are aware of the Government Digital Service and of the Office for Artificial Intelligence, who have, for example, published joint guidance on how to build and use AI in the public sector. Separately, we are also a member of the Information Commissioner’s Office (ICO) cross sector regulatory forum on Artificial Intelligence.

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

In accordance with our strategic plan commitments², which were developed alongside our Risk Outlook, we are seeking to gain insight into how technological innovation generally, and the use of AI specifically, is being or could be used across the barrister profession. We are looking to hear from and learn from others about their experiences and, as we do, hope to better understand the implications for consumers, barristers and for how the BSB regulates. There are several ways in which we have started, or are planning, to do this:

- We are engaged with LawtechUK³; a Government backed body part of TechNation formed to drive technological innovation in legal services. This includes piloting a sandbox between December 2020 and March 2021. We are part of a Regulatory Response Unit that will operate within the Sandbox pilot. LawtechUK have recently announced the five UK lawtechs chosen to join the Pilot.⁴ These pilots include the development of an *“AI-powered smart document collaboration platform”*, a *“dispute and risk avoidance tool based on advanced machine learning techniques”* and

¹ [Risk Outlook 2019](#)

² [BSB Strategic Plan 2019-2022](#)

³ [LawTechUK](#)

⁴ [Lawtech Sandbox Pilots](#)

another which uses machine learning to provide “*recommendations and information on legal services via an intelligent legal diagnostic process that can identify and assess a wide range of legal problems*”.

- Through our engagement with LawtechUK, we are meeting the Financial Conduct Authority (FCA) to understand how the provision of data can stimulate innovation.
- Ongoing engagement with barrister practices. This year we have issued a Regulatory Return to a selection of around 350 chambers, BSB entities and sole practitioners. It is an exercise we last undertook in 2015-16 and is a way for us to assess risk across the Bar and levels of compliance with our rules. This year, the Return included questions around current and future technology use, and the perceived risks and barriers to the take up of technology. The deadline for responding is March 2021.
- We are also looking to learn from others in the legal sector and those outside it – we have, for example, had discussions with the Solicitors Regulation Authority on its sandbox; reached out to the Legal Practice Management Association, and attended meetings with the Legal Services Consumer Panel on this topic. While our oversight regulator, the Legal Services Board, is seeking to ensure technology is used responsibly in the legal sector.
- Additionally, we must acknowledge that this activity has been undertaken against the backdrop of the COVID health crisis, which has given rise to the extensive use of technology (although not artificial intelligence) across the justice system, and we are aware of the potential for this to have created both benefits and harm for both consumers and the profession. We are working with both to improve our understanding of any potential harms. For example, we have commissioned qualitative research on consumer experience in which we hope to capture the experience of those who have been served by barristers using remote technology.

On the evidence we currently have available, we feel we could draw a distinction between two broad areas of AI use:

- In the direct provision of a service to the public; AI might be used to help consumers navigate the complexity of legal services, and it might enable provision of services in commoditised areas of law: conveyancing and will writing, for example.
- To support regulated professionals: for the barrister profession we can see that AI is more likely to be focussed (at least at present) on supporting barristers in their analysis of cases by, for example, reading and analysing documents.

Our current consideration of the implications for regulation and the possible need for intervention reflects this. We are also mindful that the onus is on professionals to undertake due diligence to satisfy themselves that AI is a useful professional tool and to understand its limitations, although we may need to consider (amongst other things) how we ensure barristers are able to undertake such due diligence successfully to minimise harm to consumers.

Following the activity set out above, we will be better able to respond proportionately in the public interest; ensuring we encourage and support innovation and avoid over-regulation which can stifle innovation. To this end, we are currently focussing on how we respond to the challenges, risks and opportunities of technology use in barrister service provision. First, we are looking at online courts and remote working, and secondly, we will look at what we know about AI opportunities within barrister services and how we might prepare for greater AI use in the coming years. Next year, we also begin work on the Risk Outlook 2022 and the Strategic Planning cycle that goes alongside it. It is likely that further consideration of these issues will be undertaken through-out that process also.

CHARTERED INSTITUTE FOR PUBLIC FINANCE AND ACCOUNTANCY (CIPFA)

Our report on AI and public standards did not recommend the creation of a specific AI regulator, but recommended that all existing regulators should consider and respond to the regulatory requirements and impact of the growing use of AI in the fields for which they have responsibility.

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

- *Gov.uk*
- *Turing Institute*
- *ICO*

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

Professional Ethics

The challenges are expected to be faced by both organisations (generally) and by professionally qualified chartered public finance accountants (CPFA's). CIPFA's chartered members (and registered students) are required to adhere to CIPFA's standards of professional practice.

In that regard, adherence to the principles of CIPFA Code of Ethics is a mandatory requirement for CIPFA's chartered members and students who are required to demonstrate:

- *Objectivity*
- *Integrity*
- *Confidentiality*
- *Professional Behaviour*
- *Professional Competence and Due Care*

The profession, in the form of the International Ethical Standards Board (IESB) is currently considering the extent to which complexity arising from technology represents a further threat to the principles which accountants are required to adhere to.

The IESB recognises that new technology applications, such as those combining the use of AI and big data, can produce information and perform certain tasks more efficiently and accurately than human agents. However, in order to rely on the outputs of these technology applications, there has to be sufficient knowledge of the design and application of the technology involved.

It is possible that objectivity could be impaired when undue reliance is placed on AI system outputs, especially when such outputs have been generated from biased data or information that might compromise an accountant's professional judgment. •

The challenge is then that a CPFA will be required to have the relevant level of professional competence and due care necessary to understand and evaluate the business and technical aspects of how AI system outputs were generated. CIPFA members will not be expected to be experts but will be expected to be able to probe to ensure that high quality data are being used and where the AI system's outputs were found to be not objective, then this could imply a lack of integrity. Similarly, AI systems are driven by different types of data, privacy considerations can arise and this can increase the threat to compliance with confidentiality. •

The consequences of one or more such lapses in compliance could also discredit the profession under the FP of professional behaviour, particularly in light of the increasing public expectations for trust in the digital age.

The profession is currently finalising what modification should be made to codes of practice and associated guidance. When finalised, CIPFA will update its own standard of professional practice.

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

For example, ensuring that bodies for which you have responsibility are:

- using AI in ways that are legal and legitimate – i.e. is the use of AI justified and does it comply with relevant laws and regulations?;
- setting clear responsibility for the use of AI – establishing who is responsible for which part of the AI system/process and where overall accountability lies (i.e. senior leadership);
- establishing monitoring systems and processes to identify and evaluate issues relating to the performance of the technology;
- establishing proper oversight mechanisms for the use of AI;
- enabling members of the public to challenge decisions and seek redress using procedures that are fair and transparent, whether AI is used or not.

While setting accounting, financial management reporting standards for public sector organisations in local government, CIPFA doesn't specifically have regulatory responsibility in the domain of AI or wider digital realm.

In the development of good governance standards in the sector CIPFA is looking at the principles behind decisions to introduce the use of AI, its objectives, system design, implementation and governance to ensure the avoidance of any bias, inconsistency in design and performance of AI including cyber security, access controls, data protection, prevention of fraud.

As regards standards these are drawn at a high, principle, level and would apply to the use and introduction of AI by our members in the public sector. This would be in terms of ensuring that it is used appropriately and produces an appropriate and lawful outcome e.g. data is held and used in accordance with GDPR etc, that accountants act objectively when gathering/considering data and do not, for example, manipulate information for inappropriate reasons such a personal gain, ensuring appropriate controls are in place, that responsibilities are properly allocated and that action is taken if there is non-compliance with controls.

The standards would also require that proper financial analysis is undertaken and justification put forward before determining when, and whether, to invest in AI which would involve consideration of the fairness and appropriateness of any outcome from its use as regards matters such as equality, objectivity, cost etc. This would also involve assessing/ensuring that AI is efficient and provides value for money which would include monitoring to ensure that it is both works as it should and that its output is appropriate and meets the needs of the public body.

The use of AI is also likely to create a threat to the principle of competence - whether an accountant understand how it works and what it does. This is expected to be something that International Education Standards Board for Accountancy, IESBA, will appropriately consider in terms of updating its International Code in the future for all accountants.

CARE QUALITY COMMISSION (CQC)

Our report on AI and public standards did not recommend the creation of a specific AI regulator, but recommended that all existing regulators should consider and respond to the regulatory requirements and impact of the growing use of AI in the fields for which they have responsibility.

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

Yes. Our response is limited to health and social care.

The Medicines and Healthcare products Regulatory Agency (MHRA) regulates medical devices across the UK. Software intended to provide diagnostic or therapeutic information is regulated as a medical device. MHRA's regulatory duties are set out in the Medical Device Regulations 2002 and amendments. Medical devices require a clinical evaluation; in many cases, this may require a clinical investigation. Medium and high-risk devices need to use a Notified Body. MHRA designates and audits notified bodies in the UK. Harmonised standards (European adoptions of ISO standards) may help to show conformity with the general safety and performance requirements of the device regulation.

NHSX commissions relevant guidance from NHS Digital and has an important policy role in setting out and developing the regulatory infrastructure. The main NHS Digital standards are: DCB0160: Clinical Risk Management: its Application in the Deployment and Use of Health IT Systems, DCB0129: Clinical Risk Management: its Application in the Manufacture of Health IT Systems and Information Governance and Technology Guidance. However, there are also several others around identity, information governance, and interoperability.

The ISO standards that underpin medical device regulation (by MHRA) and data handling are of a high quality and complement NHS Digital's clinical risk management standards. ISO13485, regarding quality management systems, helps give assurance that technology suppliers have good quality management systems and governance structures. ISO27001 gives guidance on handling and processing data. ISO 14971 covers risk management and ISO 62304 covers software lifecycle processes. British Standards Institute (BSI) is the UK National Standards Body and supports the development and publication of ISO standards.

Public Health England (PHE) provides quality standards and guidance for all population screening programmes. These set out the requirements for services providing screening, standards to assure the quality of care, and key performance indicators to monitor delivery at a population level.

The National Screening Committee (NSC) is responsible for advising the Secretary of State for Health and Social Care on which technologies are sufficiently well evidenced to be used within a population screening programme.

The National Institute for Health and Care Excellence (NICE) has published evidence standards for digital health technologies, and is currently considering how Health Technology Appraisal and Evaluation would work in the context of AI applications (outside of a screening context).

The Health Research Authority (HRA) regulates and manages clinical research, which many machine learning application developers and adopters are engaged in.

The Information Commissioner's Office (ICO) is the UK's independent body set up to uphold information rights in the interest of the public.

Medical royal colleges, such as the Royal College of Radiologists, play a leading role in setting professional standards of practice, and setting medical education curricula.

NHS Improvement has a financial and safety focused regulatory role for providers of NHS services, and within that manages a national system and team for identifying and alerting providers to safety issues.

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

CQC's technology and innovation steering group considers issues and service models and our ability to effectively regulate their use in health and care.

We have recently published an internal guide to assessing technology and innovation for our inspection teams, and we are shortly due to publish our joint report with NHSE/I and other sector colleagues: *Enabling Innovation and Adoption in Health and Social Care*. This report was supported by the Department of Business, Energy and Industrial Strategy's (BEIS) Regulators' Pioneer Fund

Also supported by the Regulators' Pioneer Fund, in the last 18 months we have used regulatory sandboxing as part of our work to encourage innovation, quality and safety. This involves working proactively and collaboratively to understand new types of health and social care service, agree what good quality looks like, and develop our approach to regulation. This is particularly important for innovative and technology-enabled services, which are developing quickly. One of our sandbox pilots aimed to identify what is needed to deliver high-quality care in diagnostic services that use machine learning applications and the risks involved. We also ran a sandbox focused on the use of digital triage tools in healthcare services. We worked with healthcare providers, technology suppliers, people who use services, clinicians, and other stakeholders to do this.

We are committed to working with system partners in this area. We are currently involved in the development of a new multi-agency advisory service (MAAS), funded by NHSX and led by NICE in partnership with CQC, MHRA and HRA. The aim of the new service is to clarify, streamline and accelerate the regulatory pathway for AI technology developers and give support and guidance to health and care providers implementing these technologies. This will bring together what we already know about the issues and challenges – including from previous work by Reform and NHS X.

We will publish a new strategy in 2021. We will open a public consultation on this strategy in January 2021, which will include a commitment to encouraging innovation that underpins our ongoing work in this area.

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

For example, ensuring that bodies for which you have responsibility are:

- **using AI in ways that are legal and legitimate – i.e. is the use of AI justified and does it comply with relevant laws and regulations?;**

- ***setting clear responsibility for the use of AI – establishing who is responsible for which part of the AI system/process and where overall accountability lies (i.e. senior leadership);***
- ***establishing monitoring systems and processes to identify and evaluate issues relating to the performance of the technology;***
- ***establishing proper oversight mechanisms for the use of AI;***
- ***enabling members of the public to challenge decisions and seek redress using procedures that are fair and transparent, whether AI is used or not.***

We regulate providers that carry on one or more of the regulated activities set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Where these providers are using data driven technologies as part of delivery of care, we will want to ensure they are doing this in a way that is safe and effective. Most suppliers of AI technologies don't need to register directly with us. Instead, we regulate the service they supply through our regulation of the providers using the technology. This is the case, for example, for the digital clinical triage applications used by GPs, NHS111 and hospitals to triage patients to the right service.

As part of our machine learning sandbox we determined that suppliers of machine learning applications only need to register when they are performing these tasks independently from clinicians (rather than to support clinicians with additional data or insight). We anticipate that the first machine learning applications that fall into our scope of regulation will be those that are analysing and reporting on X-ray, CT and MRI. However, where a healthcare provider is using all types of machine learning applications that are important to delivering regulated activity, we need to understand how well they are working for patients. If necessary, we have the powers to review key third-party technology suppliers responsible for an activity ancillary to regulated activity. We have not taken such action with CAD software, and we do not anticipate that our approach to machine learning software that supports clinicians in this way will differ substantially in that respect.

ARTIFICIAL INTELLIGENCE AND PUBLIC STANDARDS REPORT: REGULATORS SURVEY

REGULATOR QUESTIONS

Name of organisation: **Environment Agency**



Our report on AI and public standards did not recommend the creation of a specific AI regulator, but recommended that all existing regulators should consider and respond to the regulatory requirements and impact of the growing use of AI in the fields for which they have responsibility.

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)?
If yes, please provide details.

No

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

In our regulatory role, we regulate emissions from a range of industrial processes, including power generation, chemical manufacture, metal production, water treatment and waste recovery, treatment and disposal. We do this through issuing permits and ongoing compliance assessment, monitoring and sampling activities.

At present the Environment Agency are assessing the opportunities and developing a strategy for the potential future development of AI algorithms related to its regulatory work. An internal working group is being established to develop a strategy and consider the potential impact and opportunities for using AI to transform how we carry out our permitting, compliance assessment and monitoring activities. The issues raised in the report and advice and guidance on the use of AI in the public sector will be considered as part of the development of this strategy.

We would welcome the opportunity to work with government and other regulators on issues raised by the potential use of AI in delivering our regulatory role, and on the broader implications of AI being used by those we regulate.

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

The Environment Agency is a non-departmental public body and the main environmental regulator implementing environmental legislation in England. We do not have oversight of other bodies implementing environmental legislation such as Local Authorities.

Members of the public are able to raise issues and concerns about the Environment Agency (which in future could potentially include any related to AI) through our complaints and commendations procedure

<https://www.gov.uk/government/organisations/environment-agency/about/complaints-procedure>

Lord Evans of Weardale KCB DL
Chair
Committee on Standards in Public Life
By email only

Wednesday 25 November 2020

Dear Lord Evans

Re: CSPL AI follow up

Thank you for sharing your recently published review 'Artificial Intelligence and Public Standards'. The Commission acknowledges that the adoption of AI across public services creates both opportunities and challenges. As the UK's National Human Rights Institution, we are aware that there are privacy and other human rights implications that need to be considered when new technologies are adopted.

Furthermore, duty bearers under the 2010 Equality Act will need to consider how the use of AI does not directly or indirectly discriminate against those with protected characteristics, and to consider how they can meet their public sector equality duty obligations in the design, use and monitoring of new technologies.

We are committed to exploring further the equality and human rights implications of AI and acknowledge your recommendations to work in partnership with the Turing Institute and the CDEI on how public bodies should best comply with the Equality Act 2010. We have had to pause planned work this year exploring the privacy implications of AI in order to

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prioritise our resources to address the immediate equality and human rights issues arising from the pandemic. We are currently reviewing whether we are able to restart this work in the next financial year.

We remain committed to ongoing dialogue with the Committee and wider stakeholders on this important topic. Please do keep in touch with my



Yours sincerely,



Rebecca Hilsenrath
Chief Executive

REGULATOR QUESTIONS

Name of organisation: Food Standards Agency

Our report on AI and public standards did not recommend the creation of a specific AI regulator, but recommended that all existing regulators should consider and respond to the regulatory requirements and impact of the growing use of AI in the fields for which they have responsibility.

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

Yes, we are aware of a variety of sources of guidance and advice on the use of AI in the public sector (and other topics which are closely interlinked, e.g. AI and Data Ethics). We are aware of the Government's Data Ethics and AI Guidance landscape ([link](#)). We are also aware that there are a variety of other sources of guidance from organisations like the Alan Turing Institute, the United Nations Educational, Scientific and Cultural Organisation, and the OECD. Additionally, some private organisations have also introduced viewpoints which arguably could be applicable to the use of Artificial Intelligence in the public sector.

However, we observe the current landscape to be crowded, inconsistent and providing limited practical guidance. Smaller Government Departments, like the FSA, could be rapidly over encumbered trying to apply dense, theory-based frameworks which may, in turn, stifle our ability to innovate.

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

We have established a team, led by one of our Lead Data Scientists, to help us prepare for the potential regulatory challenges posed by AI and the impacts of current, closely related regulations. We have also enlisted the help of Cognizant (our external data science partner), to assist in navigating the ethical guidance and advice posed by the organisations referred to in Q1.

We are working to develop a fit-for-purpose framework that aligns with five key principles that remain consistent across the various viewpoints on ethical and responsible AI: Fairness, Accountability, Sustainability, Transparency and Privacy and Security. We also understand that creating AI systems is a multi-disciplinary activity and involves a range of highly complex and dynamic stages. At the FSA we see this as both a governance and technology challenge and we are adopting our practices to encompass these standpoints:

- From a governance perspective: We are considering how to build ethical practices into the AI lifecycle¹. This involves looking introspectively at our use cases with multi-disciplinary, multi-stakeholder teams to identify where risks to society through issues such as bias and unfairness may crop up and mitigate or justify these risks where possible. By introducing this approach as standard practice across future use-cases we aim to introduce the idea of "Ethics by Design".

¹ When we refer to the AI Lifecycle, we consider the end-to-end process of creating an AI System. This includes the planning, development, deployment and decommissioning of an AI System.

- In terms of data management, we work alongside our Legal and Information Management teams to ensure we evaluate that our collection, storage and use of data is compliant with the relative legislation². We rely heavily on the collection of data from external sources such as websites and API's. These data sources are pivotal for enhancing our data sets but can often lead to issues which lie in the realm of "ethical grey areas". We have introduced a standardised review process to ensure that any collection of data is fair. This process is assisted by the FSA Information Governance Board to ensure that we are following best practices in our data procurement.
- From a technology perspective: We are also working towards migrating from on-premise to the best of breed cloud environments, data mining and visualisation tools. This ensures that we are compliant with Government standards guidelines and spend controls. This also promotes more efficient and effective use of data across the organisation whilst reducing risk of data leakage, as there will be less need for localised data sets.

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

The FSA works with an array of organisations to ensure food is safe and what it says it is. However, we are limited in the extent to which we can place controls and mechanisms on said organisations when it comes to their use of Artificial Intelligence. We do however take compliance with law and regulation very seriously, especially when it concerns a controversial and polarising topic like AI, and try to ensure those we work with do too.

Many of the AI led activities we have undertaken, and will continue to work on, have the potential to impact the value chain of various organisations; local government, industry and eventually filter through to the public. When we embark on these AI led activities, we aim to garner representation from those who could be affected. By including these representatives and making them aware of our practices throughout the AI lifecycle (some of which are mentioned in Q2), we are hopeful that this is driving an ethos of learning and continuous improvement, ushering these organisations to be better prepared for the use of AI applications in their business.

² This spans, but is not limited to, legislation such as the Food Standards Act 1999 to the Regulatory Investigative Powers Act.

REGULATOR QUESTIONS

Name of organisation: The General Medical Council

Our report on AI and public standards did not recommend the creation of a specific AI regulator, but recommended that all existing regulators should consider and respond to the regulatory requirements and impact of the growing use of AI in the fields for which they have responsibility.

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

Yes. Primarily the Government Digital Service, the Office for Artificial Intelligence, and the Alan Turing Institute, as well as NHSX. We would also look to relevant national and international regulatory documents, including those that address issues of equality, data protection and automatic decision making in relation to AI. And finally, we would consult primary research published in peer-reviewed journals that addresses the challenges posed by applying AI in the public sector.

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

We actively monitor developments in relation to AI in order to consider implications for our regulatory model and whether changes are required – particularly in relation to the educational and ethical standards that we set for doctors (further details about these are provided in our response to question 3).

We are also looking for opportunities to innovate our operations across the organisation by using AI/machine learning to improve efficiency and reduce human error. In each of these areas, it will not be to replace human decision making, but to support it. To this end, we are considering different applications of AI to support internal operational processes by reducing reliance on burdensome or manual processes, by replacing or augmenting them with intelligent automation. Examples of this include the use of Chat bot for FAQs in the Contact Centre, and DarkTrace for AI driven information security monitoring on our network, which are currently both live, and AI driven redaction that we are hoping to launch soon. These are intended to increase efficiency by reducing the time staff spend on these processes. We review whether our AI-related research complies with data protection and equality regulations.

We also engage on a regular basis with key stakeholders, including Care Quality Commission and NHSX, to contribute to system efforts to improve regulatory assurance relating to new technologies.

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

For example, ensuring that bodies for which you have responsibility are:

- *using AI in ways that are legal and legitimate – i.e. is the use of AI justified and does it comply with relevant laws and regulations?;*

- *setting clear responsibility for the use of AI – establishing who is responsible for which part of the AI system/process and where overall accountability lies (i.e. senior leadership);*
- *establishing monitoring systems and processes to identify and evaluate issues relating to the performance of the technology;*
- *establishing proper oversight mechanisms for the use of AI;*
- *enabling members of the public to challenge decisions and seek redress using procedures that are fair and transparent, whether AI is used or not.*

The General Medical Council (GMC) is the regulator of doctors in the UK. We are an independent organisation that helps to protect patients and improve medical education and practice. The standards and the outcomes for medical education and training that we set for doctors include requirements that are of relevance to new technologies, including artificial intelligence.

Our guidance document [Generic Professional Capabilities](#) sets out the essential generic capabilities doctors need to demonstrate for safe, effective and high quality medical care in the UK. It relates to postgraduate medical education and training, but we expect it to support all phases of UK medical education and continuing professional development. It includes content that is of relevance in the context of this question – in relation to the safe use of medical devices; communication and interpersonal skills; clinical skills; and understanding and managing risk.

[Outcomes for graduates](#) sets out the baseline knowledge, skills and behaviours that new UK medical graduates must be able to show. A number of points included in the document are of relevance to the use of AI, including about biomedical scientific principles; diagnosis and medical management; and using information safely and effectively.

[Promoting Excellence](#) sets out the standards that we expect organisations responsible for educating and training medical students and doctors in the UK to meet. [Excellence by Design](#) sets out the standards for the development and design of postgraduate medical curricula. They require curricula to describe generic, shared and specialty-specific outcomes, to support doctors in understanding what is expected of them.

When designing postgraduate curricula, current and future workforce service needs have to be considered, recognising there has to be a balance between curricula designed for the learner and the profession and the expectation that it can evolve to meet current and future advances, service needs and opportunities. A relevant example in the context of this question can be found in the curricula of Clinical Radiology, a specialty where the use of technology may be more prevalent. Here there is explicit reference to consultant radiologists requiring the skills necessary to understand and critically appraise new technological developments, including radiological applications of AI.

There are further key principles, covered in our guidance on [Good Medical Practice](#), [Consent](#), [Practising During an Emergency](#) and [Financial and Commercial Arrangements and Conflicts of Interest](#) that we would expect doctors to follow when using AI technologies and interacting with patients/the public in relation to them.

We keep these documents under review and will in due course consider how changes in the use of technology impact on them.

It should be noted that the ability of doctors to meet the capabilities and standards we set out for them in this context is contingent on the technology and the system through which it's approved for

use providing sufficient guidance and information. They need to understand what the technology does; its strengths and limitations; how it works; and how to use it.

Finally, in respect of products utilising AI whose potential utility we have begun to explore, the GMC's Chief Statistician is operationally accountable for their statistical robustness, as well as their performance and compliance with relevant regulations (in particular the General Data Protection Regulation, or its post-Brexit equivalent, and the Equality Act). If we were to deploy such products (beyond what we have started to explore with background operational processes), the chain of oversight would extend from the GMC's Strategy and Policy Directorate up to the organisation's Senior Management Team. The output from any AI system would be used by a human as a tool to guide, not determine, any decisions on doctors. Any such deployment would involve full, prior engagement with relevant stakeholders: transparency is one of our core organisational values and it is essential to trust in the regulatory process that any use of AI is openly communicated and subject to appropriate challenge and oversight.

26 November 2020

The Health and Care Professions Council's response to the Committee on Standards in Public Life's survey on how regulators are adapting to the challenges posed by AI

1. Introduction

1.1. The HCPC is a statutory UK-wide regulator of healthcare and psychological professions governed by the Health Professions Order 2001. We regulate the members of 15 professions. We maintain a register of professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise. Our main role is to protect the public.

2. Response to the survey questions

Question 1: Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

2.1. Yes.

2.2. In the first instance, we would look for guidance via gov.uk and then using other specialist consultancies and system integrators available through government frameworks such as the G -Cloud 12.

Question 2: To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

2.3. We are currently in the process of implementing a new Digital Transformation Strategy. As part of this implementation, we are ensuring we are getting the infrastructure and data in place to exploit AI in future phases.

Question 3: To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

For example, ensuring that bodies for which you have responsibility are:

- **using AI in ways that are legal and legitimate – i.e. is the use of AI justified and does it comply with relevant laws and regulations?;**
- **setting clear responsibility for the use of AI – establishing who is responsible for which part of the AI system/process and where overall accountability lies (i.e. senior leadership);**
- **establishing monitoring systems and processes to identify and evaluate issues relating to the performance of the technology;**

- **establishing proper oversight mechanisms for the use of AI;**
 - **enabling members of the public to challenge decisions and seek redress using procedures that are fair and transparent, whether AI is used or not.**
- 2.4. The HCPC does not currently provide specific guidance or standards for our registrants on the use of AI, or the potential risks associated. This is because the extent in which our registrants will engage with AI will vary considerably depending on their profession and their individual scope of practice. Our guidance is therefore intended to be broad/general in application, so that it remains relevant to all 15 HCPC registered profession, regardless of their area of practice.
- 2.5. While we do not currently have specific guidance on using AI, we do understand the importance that our registrants remain up to date with technological advances, including developments made in AI. Our existing standards and guidance therefore set broad expectations for registrants to keep up to date with developments relevant to their scope of practice, which would include advances made with new and emerging technologies.
- 2.6. For example, [our standards of conduct, performance and ethics](#) set an overarching expectation that registrants maintain and develop their knowledge and skills (standard 3), and keep their skills up to date and relevant to their scope of practice (standard 3.3). We would therefore expect registrants to remain up to date with technological advances such as AI, as relate to their scope of practice. Standard 3.4 also requires registrants to keep up to date and follow the law, which would include following the law relevant to data governance and protection.
- 2.7. Our [standards of proficiency](#) also state that registrants must be able to draw on appropriate knowledge and skills to inform practice (standard 14), which includes being able to ‘change [their] practice as needed to take account of new developments or changing practices’. Our standards of proficiency are set at the minimum threshold necessary for safe and effective practice, and are drafted in language which should enable them to stay relevant if there are changes in technology or working practice, and would therefore apply to any registrant when using emerging technologies and AI.
- 2.8. We keep our standards under continual review to ensure that they are working and that they continue to reflect current practice. We recently [consulted on changes to our standards of proficiency](#) for our registrants, and specifically asked whether our generic standards adequately address the importance of keeping up to date with technology and digital skills.
- 2.9. As part of this consultation, we also sought feedback on our proposal to amend standard 14 (listed above) so that it refers specifically to the need for professions to take account of new technologies. Once again, the language proposed for standard 14 is broad in order to remain relevant and to

encompass any future developments in technology. However, we believe that this would provide registrants with greater clarity about our expectation that they remain up to date with technological advances, which may include AI depending on their scope of practice and developments made.

- 2.10. Our consultation closed in October and we are currently in the process of analysing responses to understand whether changes to our standards are required. We will be reporting on the findings in the new year.

REGULATOR QUESTIONS

Name of organisation: Human Fertilisation and Embryology Authority

Our report on AI and public standards did not recommend the creation of a specific AI regulator, but recommended that all existing regulators should consider and respond to the regulatory requirements and impact of the growing use of AI in the fields for which they have responsibility.

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

Yes, but the different uses of AI inevitably mean that we need to consult several different sources of guidance and advice. In respect of developing our regulatory practice around the use of AI by practitioners in the regulated sector, we would consult the following bodies and their relevant publications:

- [the Centre for Data Ethics and Innovation \(CDEI\)](#) have produced helpful high-level ethics guidelines. We will be following their progress in developing more specific regulatory recommendations for UK regulators in the future.
- We hope that the Centre for Data Ethics and Innovation together with the Government Office for AI, will identify the gaps where existing regulation may not be adequate.
- the [European Commission High Level Working Group on AI](#) have produced high-level ethics guidelines, which we would take into account.
- the UK Parliament Select Committee on Artificial Intelligence's Report, AI in the UK, raises several important background issues on AI for regulators and for public bodies such as ourselves who hold data. We particularly welcome recommendation 69 in respect of AI-specific regulation about the need to provide additional resources.
- We welcome the Department of Health and Social Care's Code of Conduct for data driven health and care technology, which supports principles outlined by the Nuffield Council on Bioethics, and would concur with the 10 principles around behaviours expected from those developing, deploying and using data-driven technologies, and will take account of these in future work on this area.
<https://www.gov.uk/government/publications/code-of-conduct-for-data-driven-health-and-care-technology/initial-code-of-conduct-for-data-driven-health-and-care-technology>
- The Information Commissioner's Office (ICO) produces very helpful guidance around data protection and governance issues and we follow their production of guidance around AI, for example the Guidance on AI and data protection. <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/guidance-on-ai-and-data-protection/executive-summary/>
- [BSI report on digital health and AI](#) sets out some practical suggestions which are relevant to consider for regulators: <https://www.bsigroup.com/en-GB/Innovation/digital-healthcare/>
- [NICE's Evidence Standards Framework for Digital Health Technologies](#) is a helpful resource when considering standards for the evidence that should be available, or developed, for digital health technologies to demonstrate their value in the UK health and care system.

In respect of considering AI and data-driven technologies in our own future inspection practice as a regulator, we could consult, e.g.:

- HFEA is a member of the Regulators' Innovation Network run by BEIS which aims to help foster a culture of experimentation across regulators and share best practice.
- the UK Government's [Guide to using Artificial Intelligence in the Public Sector](#).
- [CQC's emerging work to establish a regulatory sandbox](#) around diagnostic screening services delivering clinical activity themselves as part of a regulated activity <https://www.cqc.org.uk/what-we-do/how-we-work-people/machine-learning-diagnostic-screening-services>
- In all of the above we work in line with the Regulator's Code; https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913510/14-705-regulators-code.pdf

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

As a small, expert regulator we are not resourced to develop independent expertise on AI and nor, given the wealth of guidance from others (see above), is that necessary or appropriate. The following summarises our key activities at the moment.

HFEA Strategy and business plan

- Our 2020-2024 strategy includes an aim for shaping the future, to embrace and engage with changes in the law, science and society. This includes responding to scientific and social changes, particularly in modern family creation and the fields of genetics and AI. <https://www.hfea.gov.uk/media/3244/strategy-2020-2024.pdf>
- Our six-month post-Coronavirus business plan for October 2020 – March 2021 includes an objective to monitor the use of AI in fertility clinics and the wider sector. This will help us to understand any developments and be responsive to these and ensure that our regulatory regime is fit for purpose. <https://www.hfea.gov.uk/media/3257/2020-2021-post-coronavirus-six-month-recovery-business-plan.pdf>

Horizon Scanning and Scientific and Clinical Advances Advisory Committee (SCAAC)

- The HFEA board established a horizon scanning function in 2004, the purpose of which is to identify issues that could have an impact on the field of assisted reproduction or embryo research. By identifying these issues, the Authority can be aware of potential licence applications and prepare, if necessary, a policy position or relevant patient information. The horizon scanning process is an annual cycle that feeds into the HFEA's [Scientific and Clinical Advances Advisory Committee \(SCAAC\)](#) and the Authority's consideration of ethical issues and standards.
- The HFEA considers artificial intelligence to be high priority for consideration in 2020/21. Issues are classified as 'high priority' if they are within the HFEA's remit and meet at least two other criteria:
 - Timescale for likely introduction (2-3 years)
 - High patient demand/clinical use if it were to be introduced
 - Technically feasible
 - Ethical issues raised or public interest
- As AI has prioritised as 'high', it will be discussed by the SCAAC on a regular basis.
- We are also monitoring **patient-facing** AI and data-driven new technologies, such as fertility or patient apps.

Use of HFEA Register data for commercial data driven technologies

- Our Register Research Panel monitors the number of applications seeking our register data for data driven technologies and we have noted an increase in interest from commercial companies in using our patient data to build prediction models using AI. Currently, however, our regulations allow us only to release information for research in the public interest.

Contribution to external work

- We are interested to contribute as and when The Government Office for AI seeks to use existing regulators' expertise in informing any potential statutory regulation that may be required in the future.
- Although not a large dataset compared to other areas of medicine, the HFEA does have a dataset recording licensed treatment activity since 1991, further back than any such dataset in the world. However, this dataset of global significance is also subject to a particularly high level of confidentiality and specific restrictions around data sharing, set out in the HFE Act (1990).
- Due to the sensitive nature of this data, balancing our statutory obligations with sharing data with the research and innovation community may require different arrangements than with other medical data sharing initiatives. For instance, we have recently been approached by the UK Health Data Research Alliance, Data Alliance Partnership, but discussions are at a very early stage.
- We welcome the aim in the White Paper 'Regulation for the Fourth Industrial Revolution', to 'develop tools for regulators to support them to review their guidance, codes of practice and other regulatory mechanisms to ensure that they provide flexibility for those businesses that want to innovate, while ensuring a clear route to compliance for other businesses', and the corresponding aim to 'support business, policymakers and regulators to make effective use of standards where appropriate as a complement to more outcome-focused legislation'. We would be pleased to enter into discussion on these as required.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807792/regulation-fourth-industrial-strategy-white-paper-web.pdf

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

For example, ensuring that bodies for which you have responsibility are:

- **using AI in ways that are legal and legitimate – i.e. is the use of AI justified and does it comply with relevant laws and regulations?;**
- **setting clear responsibility for the use of AI – establishing who is responsible for which part of the AI system/process and where overall accountability lies (i.e. senior leadership);**
- **establishing monitoring systems and processes to identify and evaluate issues relating to the performance of the technology;**
- **establishing proper oversight mechanisms for the use of AI;**
- **enabling members of the public to challenge decisions and seek redress using procedures that are fair and transparent, whether AI is used or not.**

The use of AI in the fertility sector is increasing, but not yet commonplace. As noted above, we have no specific powers related to the regulation of AI in the clinics we licence, nor do we have the resources to develop staff expertise at present. We are considering how we can best ensure that any AI systems that a licensed fertility clinic uses meets the requirements set out in laws such as GDPR or the Equality Act, or to inspect data security and the potential for data breaches, but without regulatory or industry guidelines produced by experts in the field of AI it will be difficult to regulate this area of technology effectively.

Engaging with the sector and the public

- Where AI creates social, ethical or legal risks, risks public trust or raises associated questions we may wish to engage with the sector or the public around these issues. We would agree with the aims of the White Paper 'Regulation for the Fourth Industrial Revolution' set out here, and we would welcome support in finding innovative methods of public engagement.
- However, we would note that additional resource may be required in order for small specialised regulators such as HFEA to carry out substantial public engagement work projects, for example on the scale that we did successfully in the case of mitochondrial DNA donation technologies in 2012 onwards, as the White paper notes. We would support the White Paper's overall aims and vision in relation to regulatory public engagement:
 - *'We want innovators and the public to have confidence in the UK's regulatory regime. We will build dialogue with society and industry on how technological innovation should be regulated. We will ask the Regulatory Horizons Council to identify priorities for greater public engagement on regulation of innovation. For example, where technologies pose complex ethical or moral considerations greater public engagement may be appropriate to shape government thinking on appropriate regulatory frameworks. Government departments and regulators will continue to lead public engagement on their policies, working with expert bodies such as the Centre for Data Ethics and Innovation. As part of its role, the Better Regulation Executive will provide support, advice and share best practice with policymakers and regulators on public engagement techniques to support appropriate regulation of technological innovation, working with partners such as Sciencewise. The Better Regulation Executive will build capability in novel and creative public engagement techniques that go beyond public consultation in this important area.'*

Compliance, Code of Practice and License Conditions

- AI is a specialised area of knowledge and requires an understanding of how AI systems are developed and maintained. Currently our compliance team does not possess the expertise to reliably inspect AI systems. However, we would be interested in considering in the future how our compliance team could support the regulation of AI systems, either through appropriate validation and verification of these system from other regulators, clinic staff or third-party companies.
- Our Code of Practice is updated on a regular basis and any policy changes around the use of AI will be developed, with advice from external experts used to feed into this work as required.
- If appropriate or needed, we have the potential to introduce a new license condition or adapt an existing license condition to ensure that any AI system meeting the required standards under the appropriate regulatory body.

Time-lapse imagining AI – embryo grading algorithms

- We are currently undertaking a large project in the responsible use of treatment add-ons in the fertility sector, including time-lapse incubation and imaging technologies in which AI software is used to grade the morphological quality of embryos to assist with embryo selection for IVF.
- We provide information for patients about [treatment add-ons](#), which are additional to routine fertility treatment but may lack evidence into their efficacy and safety. This includes time-lapse imaging and the algorithms that they use to grade embryos for selection for embryo transfer or freezing. Our SCAAC reviews research papers annually and provides a recommendation on a 'traffic light' rating of the evidence base for the effectiveness and safety of an add-on, including time-lapse imaging. Clinics are then asked to direct patients to this information on our website before a patient begins treatment. We believe that such independent impartial, information is crucial to enable patients to reach a fully informed decision.

**Artificial Intelligence and Public Standards Report: Regulators Survey –
ICO response to the Committee's letter of 14 October 2020**

Name of organisation: Information Commissioner's Office

About the Information Commissioner's Office (ICO)

The Information Commissioner has responsibility in the UK for promoting and enforcing the General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA 2018), the Freedom of Information Act 2000 (FOIA), the Re-Use of Public Sector Information Regulations 2015(RPSI), the Environmental Information Regulations 2004 and the Privacy and Electronic Communications Regulations 2003 (PECR), amongst others.

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

Q1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

In 2020, the Information Commissioner's Office has published two pieces of guidance on artificial intelligence (AI):

- The guidance on AI and data protection¹; and
- Explaining decisions made with AI² (in collaboration with The Alan Turing Institute)

These two pieces of guidance will be the cornerstones for the ICO's future activity in the AI space. We will use these pieces of guidance to respond to issues where AI poses a novel threat and to issues where AI is the underpinning technology for applications that pose risks to individual rights and freedoms.

The guidance on AI and data protection largely covers the General Data Protection Regulation (GDPR) and Part 2 of the Data Protection Act 2018

¹ <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/guidance-on-artificial-intelligence-and-data-protection/>

² <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/explaining-decisions-made-with-ai/>

(DPA18). These pieces of legislation apply across sectors (excluding law enforcement and intelligence services). The guidance will apply to the use of AI in the public and private sector. We believe the guidance is flexible and robust enough to handle a broad range of use across the public and private sector.

The ICO appreciates and supports the work that the Committee on Public Standards (the Committee) has done in this area. We were happy to provide feedback to the Committee during their work on AI in the public sector, in a meeting with officers of the Committee in November 2019, and we welcomed the publication of the report in February of this year.

We are also aware of the following pieces of guidelines published by the government:

- Guide to using AI in the public sector, which provides practical advice on planning and implementing AI systems in the public sector.
- Guidelines for AI procurement, which provides guidance on how to handle issues of transparency, explainability, etc during the procurement stage.
- Understanding AI ethics and safety, commissioned to The Alan Turing Institute by the government.

We have also, in addition to our guidance on AI and data protection and explaining decisions made with AI, provided guidance and advice on a range of specific cases where AI is the underpinning technology. For example, we published a Commissioner's Opinion about the use of live facial recognition³. We also have engaged with law enforcement bodies about their use of data analytics. We are continuing to develop an approach where we provide general guidance that is targeted at all sectors, whilst also providing advice and guidance on specific use cases involving AI, where appropriate.

Q2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

The use of AI is ubiquitous, and we see new applications of it almost every day. This is true not just in the public sector but throughout most sectors. In a significant amount of cases, AI processes personal data and therefore data protection law is engaged.

³ <https://ico.org.uk/media/about-the-ico/documents/2616184/live-frt-law-enforcement-opinion-20191031.pdf>

As the data protection regulator, we recognise not just the opportunities AI brings but the risks to individual rights and freedoms. This is why we made AI one of our priority areas in our Technology Strategy⁴ in 2018, and have continued to prioritise AI up to and during the Covid pandemic⁵.

As part of it being one of our priorities, we have invested time and resources to looking at the implications for individual rights that AI brings. For example, in 2018 we appointed our first Research Fellow in Artificial Intelligence, Professor Reuben Binns. During his time at the ICO, Professor Binns led on the development of the AI auditing framework, which is designed to give the ICO a clear methodology to audit AI applications. The most significant milestone of the AI auditing framework to date is the guidance on AI and data protection.

This guidance is helping us to prepare our investigations and assurance teams to assess AI systems to ensure they are processing personal data lawfully, fairly, and transparently. Our investment in upskilling of staff is ensuring that they are prepared to respond to issues, whether it is preparing our investigations and assurance teams, or taking a proactive approach to encourage organisations to embed data protection by design when developing AI systems.

The ICO recognises the need to increase its capacity in AI and data science. We are actively recruiting additional expertise in this domain as part of our strategy to develop the ICO's AI and data science capability.

The development and use of AI has a direct consequence for our role where and when personal data is at play, but we also recognise that personal data in AI is the driving force across a range of regulators. That's why we are working with The Alan Turing Institute, the Office for AI, and a range of UK regulators including the Financial Conduct Authority, Ofcom and the Competition and Markets Authority (CMA) amongst others on cross-cutting issues. We established and currently chair two working groups in the AI space: the AI Regulators' Working Group and the Regulatory Capacity Working Group. These groups represent a cross-regulatory forum to ensure our response to developments in AI are coordinated and effective. In addition, through the establishment of the Digital Regulation Cooperation Forum, we have developed a framework for closer collaboration between the ICO, Ofcom, and the CMA and whilst the remit is

⁴ <https://ico.org.uk/media/about-the-ico/documents/2258299/ico-technology-strategy-2018-2021.pdf>

⁵ <https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/blog-information-commissioner-sets-out-new-priorities-for-uk-data-protection-during-covid-19-and-beyond/>

broader than AI, many of the issues under consideration have AI as a significant factor.

Whilst this work focuses on issues arising specifically from AI, we note that many issues also arise from systems that may make automated decisions and/or use algorithms, but do not use AI. These broader questions often covers areas around accountability, fairness and transparency, as well as specific questions about automated decision making within the GDPR. We have found that our guidance on AI has had broader applicability to the use of modern computing techniques and the use of personal data, and as a result we have not had to materially adapt our practices in engaging with AI, as we can treat the risks that AI poses in the same way we treat the risks that systems not driven by AI pose.

However, we are exploring areas where AI may present novel risks and we will build on our guidance by developing further tools including a risk toolkit for organisations using AI which we will publish in 2021.

Q3. To what extent are you ensuring that bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

The accountability principle in data protection makes organisations responsible for complying with data protection law and being able to demonstrate their compliance. This applies to organisations using AI to process personal data.

Our existing guidance on AI (mentioned above) presents our thinking on what robust controls and mechanisms organisations should have in place to mitigate potential risks associated with AI and non-compliance with data protection law. The guidance on AI and data protection provides what we think is best practice as well as what organisations must do to comply with the legislation. It provides practical guidelines for organisations to ensure they process personal data fairly, lawfully, and transparently.

To reiterate, we will also build on this guidance by offering risk and product-oriented additional guidance and toolkits which will provide further practical advice about how organisations can audit their AI systems to ensure it is compliant.

In addition, our work to strengthen our investigations and assurance teams and their capability to assess AI systems ensures we are responding to the increased use of AI and our ability to assess any risks that this may pose to individuals.



Information Commissioner's Office

This strengthens our ability to exercise our regulatory powers effectively to assess whether organisations are placing robust controls and mechanisms to mitigate risks associated with AI.

We are also committed to promoting innovation in the development and use of responsible AI. We believe that organisations can accelerate their adoption of AI when they have clarity over how to assess what responsible AI means.

In our regulatory sandbox we have worked and are currently working with several organisations using AI in novel ways. The sandbox allows these organisations to test their systems in a safe environment before deploying them in the real world.

We are leveraging this experience to explore how privacy by design can be applied to the development and use of AI. We are collaborating with other regulators, leading research bodies, standards bodies as well as public and private sector organisations to develop this thinking and to deliver practical and pragmatic interventions from the ICO in the future.

Name of organisation: **Local Government and Social Care Ombudsman***



**The Local Government and Social Care Ombudsman is not a regulator; their role is to investigate complaints from the public about councils and some other public bodies. They may at some stage receive a complaint or need to challenge a decision made through the use of AI. In our report, we said that public bodies need to continue to enable people to challenge decisions and to seek redress using procedures that are transparent and fair, whether AI is used or not. Decisions will still need to be explained and justified and that may become more difficult when automated systems are involved. To that end, we remain keen to hear their views on the matter.*

Our report on AI and public standards did not recommend the creation of a specific AI regulator, but recommended that all existing regulators should consider and respond to the regulatory requirements and impact of the growing use of AI in the fields for which they have responsibility.

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

Answer: As an organisation we are aware of and have looked at the GOV.UK (Office for Artificial Intelligence) guidance on the use of AI in the public sector. We are also aware of the OECD principles on AI. However, we do also recognise we need to do more to understand and identify the potential use of AI in local authorities and other bodies within our jurisdiction.

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

Answer: The LGSCO is not a regulator. We are the last port of call for complaints about the actions of local authorities and social care providers. We make judgements about whether or not the individual complaining to us has suffered injustice and make recommendations to remedy that injustice. We can and do recommend process and procedure changes to improve public services for the wider population. However, we would welcome further guidance in this potentially complex area.

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

For example, ensuring that bodies for which you have responsibility are:

- using AI in ways that are legal and legitimate – i.e. is the use of AI justified and does it comply with relevant laws and regulations?;
- setting clear responsibility for the use of AI – establishing who is responsible for which part of the AI system/process and where overall accountability lies (i.e. senior leadership);
- establishing monitoring systems and processes to identify and evaluate issues relating to the performance of the technology;
- establishing proper oversight mechanisms for the use of AI;
- enabling members of the public to challenge decisions and seek redress using procedures that are fair and transparent, whether AI is used or not.

Answer: We are not a regulator and therefore don't have the powers to ensure that bodies within jurisdiction comply with particular arrangements that a regulator might.

However, part of our role is to ensure that decisions made by the bodies in our jurisdiction are fair, transparent and properly informed by the individual circumstances of each situation – and that ‘blanket’ rules/decisions are not thoughtlessly imposed. Therefore, potentially we may challenge inappropriate decisions made through the use of AI, on behalf of members of the public.

For example, we recently considered two cases relating to parking. In one case the complainant was dyslexic and the Council’s parking tickets and all information on its website said appeals against tickets could only be made online in writing. However, the complainant needed to explain himself over the phone and also needed decisions and other letters communicated in audio format so he could comprehend them.

In another a man complained that the Council failed to make reasonable adjustments when he tried to challenge a penalty charge notice (PCN) it issued to him for a parking contravention. This meant he was not able to challenge the PCN.

One of the main messages from these cases was that move to digitise services shouldn’t disadvantage people with protected characteristics who might need reasonable adjustments. This judgment could also be applied to the use of AI.

Both Councils have subsequently amended information on parking tickets and their websites to give contact details for people who needed to request reasonable adjustments.

Committee on Standards in Public Life – Progress Update Request

Name of organisation: Legal Services Board

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

1. Yes. The Office for Artificial Intelligence has useful guidance on the use of AI in the public sector from 2019. Information available from the Centre for Data Ethics and Innovation (CDEI) is also useful and points to the opportunities, risks and governance challenges associated with AI.

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

2. We have undertaken a programme of work on technology and innovation. This first phase of this work focused on establishing an evidence base whereby we commissioned a series of papers and podcasts from experts in technology, regulation and legal services.¹ We also sought views of technology developers, legal services providers, technology-based legal businesses, and consumers. Our evidence points to a number of challenges and questions regarding AI in the legal services sector, including:
 - The potential for AI to increase the power imbalances that lawyers mediate and the need for legal professionals to understand AI decision-making tools in order to do the best for their clients and ensure fundamental values and principles are protected.
 - The potential for the use of AI technology in legal services to raise regulatory issues around human accountability and respect, with any potential over-reliance on AI undermining people's ability to take responsibility.
 - The need to consider the issues posed by specific AI-based technologies and their use, and the extent of regulation required to address these issues. For example, should there be greater regulation when AI is used to provide services directly to consumers? Is it sensible to expect the legal services providers who use AI-based applications to understand how they work and are trained in their use and implications? If the answer is no, then should regulators be setting standards for AI and its use?
3. Emerging technology, including AI, will be considered as part of the next phase of our technology and innovation work. We plan to carry out research on the social acceptability of developments in technology. As part of our work on the scope of

¹ Legal Services Board, Technology and Regulation Project <https://www.legalservicesboard.org.uk/our-work/ongoing-work/technology-and-innovation/developing-the-next-phase-of-our-work-on-technology-and-innovation>

regulation, we will also consider how a risk-based approach to regulation could better enable innovation and the use of technology.

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

4. The LSB operates within a statutory framework set through Parliament – the Legal Services Act 2007 – which describes our functions and gives us our powers. The Act sets out eight regulatory objectives² that we share with the organisations we oversee. The regulation of legal professionals is carried out by 15 approved regulators and regulatory bodies and the LSB holds these bodies to account in meeting their obligations under the Act.
5. Our core functions include overseeing the regulators’ performance, setting the annual fees that practitioners pay them and approving changes to their rules and other arrangements. We ensure that regulation of legal services is carried out independently of the organisations that represent providers. We also collect evidence on legal needs and the operation of the market.
6. Certain rules specify that some legal activities (known as the ‘reserved’ legal activities) can only be carried out by individuals or firms authorised by one of the regulators we oversee.³ There are other activities, including providing legal advice, representing a person in a mediation or negotiations, and drafting documents, such as wills and contracts, which are not included as ‘reserved’ legal activities. This means that a person does not have to be legally qualified to carry them out, and if they only perform these activities, they are not covered by the legal regulatory framework. In effect this means that in England and Wales it is possible to be an ‘unregulated’ legal services provider, though unregulated providers must still comply with general consumer privacy and data protection laws and regulations.
7. The Legal Services Act 2007 reflects the historical title-based approach to legal services regulation and was written prior to developments in technology. We know that technology is an increasing feature of how legal services are delivered, and that Covid-19 has likely cemented its role in the sector. Our research indicates that unregulated providers tend to be more innovative and bigger users of technology. This gives rise to questions on whether there is a widening consumer protection gap between users of regulated and unregulated legal services. It also raises questions on whether the current scope of regulation is limiting technological innovation in the sector.

² The eight regulatory objectives are: protecting and promoting the public interest; supporting the constitutional principle of the rule of law; improving access to justice; protecting and promoting the interests of consumers; promoting competition in the provision of services; encouraging an independent, strong, diverse and effective legal profession; increasing public understanding of the citizen’s legal rights and duties; and promoting and maintaining adherence to the professional principles.

³ The reserved legal activities are: the exercise of a right of audience; the conduct of litigation; reserved instrument activities; probate activities; notarial activities; and the administration of oaths.

8. We plan to continue our work on technology and innovation, including research on the social acceptability of emerging technologies such as AI. This will help ensure that regulatory approaches to technology are broadly acceptable to both legal services consumers and providers, and compatible with wider public interest. Our work on technology has pointed to specific concerns about AI that we will explore in our research, including:
 - Autonomous automated decision-making (e.g. humans out of the loop)
 - Possible discrimination (e.g. underlying biases in data used to educate AIs)
 - Transparency of decision-making
 - Unsecure data and record-keeping
 - Individual fairness being less important than general utility

9. Our ongoing work on technology and innovation will align with our strategy for the sector and support the responsible use of technology that commands public trust. The role of AI, and other emerging technologies, will be considered as part of our wider policy work. Other planned work, including our regulatory performance framework review, may also consider the role of technology where relevant.

NATIONAL INSTITUTE FOR CARE AND EXCELLENCE (NICE)

Our report on AI and public standards did not recommend the creation of a specific AI regulator, but recommended that all existing regulators should consider and respond to the regulatory requirements and impact of the growing use of AI in the fields for which they have responsibility.

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

Yes. Office for AI and the Turing Institute published the AI Guide providing advice and guidance to public sector organisations on best practice in data science and AI. NHSX has also published a beta version of their Digital Technology Assessment Criteria and consolidated information governance advice. NICE hopes to provide advice on data standards for effective use in (health) AI technology.

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

NICE has commenced a programme of work to deal with the regulatory challenges posed by AI technologies. This work aims to establish the gaps in the regulation of digital technologies, determine whether NICE's existing technology evaluation methods are applicable to AI, and develop new frameworks for assessing digital health technologies. NICE has already published the evidence standards framework for digital health technologies. A multi-agency approach is being taken to form a regulatory taskforce to develop and promote a regulatory pathway for AI developers and application of AI technologies into health care.

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

For example, ensuring that bodies for which you have responsibility are:

- using AI in ways that are legal and legitimate – i.e. is the use of AI justified and does it comply with relevant laws and regulations?;
- setting clear responsibility for the use of AI – establishing who is responsible for which part of the AI system/process and where overall accountability lies (i.e. senior leadership);
- establishing monitoring systems and processes to identify and evaluate issues relating to the performance of the technology;
- establishing proper oversight mechanisms for the use of AI;
- enabling members of the public to challenge decisions and seek redress using procedures that are fair and transparent, whether AI is used or not.

Although not a regulatory body, NICE provides advice and guidance about the standards of evidence required for different digital technologies. This includes clear methods for assessing clinical effectiveness to determine the extent of risks and benefits to the health care system with consideration of risk management protocols. Members of the public are invited to participate at various stages of the assessment process to provide input and to challenge decisions to ensure procedures are fair and transparent.

SOLICITORS REGULATION AUTHORITY (SRA)

Our report on AI and public standards did not recommend the creation of a specific AI regulator, but recommended that all existing regulators should consider and respond to the regulatory requirements and impact of the growing use of AI in the fields for which they have responsibility.

1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

Yes, in relation to issues around personal data protection we have a good relationship with the Information Commissioner's Office (ICO). In carrying out our regulatory functions we have clear mechanisms and controls in place in relation to compliance with GDPR, the Equality Act and our other legal obligations. We are clear about the importance of the Nolan principles and how we operate to ensure technology facilitates not negates important principles in relation to the public interest and standards.

At a wider level, links to Government Digital Service and the Centre for Data Ethics and Innovation are being established as we build our capability in SRA's use of AI in our regulatory activities. These include web sweeps to ensure compliance with regulatory requirements and include the display of the [SRA logo](#) on regulated firms' websites as an example. We already use the Government Digital Service standards in our digital and ICT work.

As a suggestion, we think more could be done to signpost National Cyber Security Centre and Government Digital Service guidance to all regulators and Government Bodies in a proactive way to develop a more coordinated approach to best practice and risk-management in relation to AI's use by all regulators.

2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

It should be noted that the focus of our reply to Question 2. is on the development and responsible adoption of legal technology that can lead to greater efficiency and new types of services delivered in new ways to the benefit of consumers and law firms. This is separate to the use of regulatory technology (regtech) and its application to our own work as a public body, where we are starting to use technology more – through web sweeps etc and in some of our communication activities. On both fronts we are building our expertise and are mindful of the recommendations in the Committee's report.

A few specific examples

- As a key strategic aim in our 2020-2023 Corporate Strategy, we are focused on actively supporting the adoption of legal technology and other innovation that helps to meet the needs of the public, the wider business community and regulated entities.
- In carrying out this work, we have gained considerable insight and understanding into the risks and appropriate use of AI and other legal technology. This has ensured we have a better understanding of its safe use by others.
- Last year we received funding from the Regulators Pioneer Fund (RPF) to run a competition in partnership with Nesta Challenges to accelerate direct to consumer tech-driven solutions to

help people get the legal help they need. This work has also helped us understand some of the barriers to tech innovation in our sector, build a community of innovators who we continue to engage with we can engage with and offered insights into a range of compliance and regulatory issues. Details of the project and an explanation of what we learned can be found in the [reports](#) that we and Nesta, our delivery partner, produced.

- We are involved in the launch of the Tech Nation [Lawtech Sandbox](#). It is intended to help the legal sector harness lawtech with technologies that improve or replace traditional methods of delivering legal services. It will support ideas, products and services that address legal needs and offer both research, insights and policy recommendations.
- We are building the resources we provide for innovators over the coming years, looking to coordinate with other regulators to help innovators understand regulatory requirements and implement AI ethically. We are currently collaborating with the Law Society on a range of lawtech related projects where we have a common interest and similar aims. We adopt a proactive approach and go out to engage with innovators where they operate to provide a flexible and practical response to their needs. We are also keen to work with the professional bodies as well as the regulators.
- We are also taking forward a set of activities to start to mainstream our innovation work across our organisation including building on our SRA Innovate function and establishing an internal [panel of experts](#). This panel will initially continue to provide resource to provide direct support to innovators, but the intention is that it will focus on becoming a central source of expertise, It will also support our work with the Lawtech Sandbox as we are part of its [Regulatory Response Unit \(RRU\)](#) that will provide answers to regulatory questions that applicants have.

3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?

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We regulate in the public interest and we can see a useful read across from the Committee's findings about the use of AI and public standards to drive law firms' ethical adoption of AI to deliver legal services to the public.

In direct use of AI, the legal services we regulate have been somewhat slower than, for example, financial services, to adopt innovative technologies and AI at scale. As mentioned above our research is intended to provide a benchmark on the issues you have set out above that will inform our future work. We also intend that it will provide a baseline governance, procurement guidelines and the monitoring of lawtech in law firms We are also developing the SRA Innovate Space whereby

questions and proposals can be assessed from an enforcement and ethics perspective before widescale adoption by a firm.

In responding to the changing legal technology environment and its regulation, we emphasise that it is open to solicitors and firms to use any technology they think is appropriate for their business. This remains subject to our [principles and standards](#).

In practice, this means for example that firms will have to make sure that any decisions around tech and the way it is used, are in the best interests of each client. There must be appropriate governance and systems and controls in place to ensure that this meets our requirements, This includes around standards of work/supervision, the safeguarding of assets and information, conflicts/referrals etc as well as meeting wider legal obligations (AML, data protection and equalities legislation etc).

In terms of transparency/audit of AI decision-making, firms must be able to demonstrate compliance and be accountable for what they do. And, relevant to the potential issue of in-built bias within AI, are our requirements to promote [EDI](#) and to [uphold public trust and confidence](#).

As a regulator we take cyber-security and data protection very seriously. We actively promote to those we regulate the need for robust assurance and oversight of the systems they use – for example in our annual [Risk Outlook](#) publication

To ensure there is senior leadership and oversight, we would expect as a minimum that the Compliance Officers for Legal Practice (COLP) to be responsible for regulatory compliance when new technology is introduced.

We want to build consumer trust in the use of technology to deliver legal services and intend to contribute to this by building on our existing relationship with the ICO and explore opportunities for joint working for example on contextualising their AI audit framework for law firms. The framework provides guidance on data protection compliance, a methodology to audit AI systems to ensure they are processing data fairly and risk and control mechanisms.

With any adoption of AI by those in our regulated community, at a greater scale or pace than we have seen to date, we would need to bolster our own skills and we keep this under review. To date we have not seen any evidence of technology adversely affecting standards in legal services.

In summary and in relation to the (Nolan) Seven Principle of Public Life we have seen no evidence these are being compromised through greater use of new technology in the legal services sector.