

DRAFT (05/02/2018a): On the proposed move of data policy remit from CO to DCMS

- There continues to be a need for better policy around complex data systems (including AI) in Whitehall, & data use that is seen to respect the rule of law;
- A move to DCMS can not deliver trustworthy data policies across Government, but we recognise *current GDS leadership* is not delivering either;
- While this rearrangement may be a short term improvement, Brexit delivery will require the use of Cabinet Office powers under effective leadership. All other reasons entirely aside, it will have to move back within months.

Narrowly incentivised but well meaning public bodies see no difference between using data for its original purpose, and accessing medical records or other sensitive personal data held by other bodies for entirely different purposes. If it is held by a Whitehall Department, other departments feel entitled to take a copy. Clause 8 of the [current Data Protection Bill encourages such copying](#) far beyond the purposes stated at collection.

The Government is going to have to come clean with Parliament on what it is doing regarding data policy. That it kept these changes from the House of Lords will also need to be addressed. Our current questions are:

1. **What is the citizen need?** (and relatedly, what is the Government need?)
2. **Will a citizen be able to see how data about them is used?**
3. **How will DCMS deliver where GDS hasn't?**

There are many more issues below that must be addressed when details are published

Background

The Government is [proposing](#) to move responsibility for “the [Better Use of Data](#)” from the Cabinet Office to DCMS. There is not expected to be a consultation, and **this possibility was withheld from the Lords when they were debating the relevant part of the Data Protection Bill** only 2 weeks ago. This note raises some questions and consequences in the context of the ‘Framework for Data Processing by Government’ in the Bill - a framework which will likely be the Cabinet Office’s already weak [“data science ethics framework”](#) - but watered down even further in response to Departmental demands.

This proposal moves data policy from somewhere in Whitehall that could deliver but doesn’t care, to somewhere that can’t deliver but thinks it should try: this is not a clear improvement.

What will this proposed change do for citizens/constituents? For policy delivery? For Brexit? What is the user need here?^{*1} Will citizens be able to see how Government uses data about them? Or will the chasm between promise and delivery grow deeper?

Rather than a “world leading data protection regime” for Government, **DCMS will only be able to get the lowest common denominator through write round - it has no levers to encourage other departments in Whitehall to deliver.** This creates a race to the bottom in a Whitehall also handling Brexit, and the task of bridging the gap will fall on citizens and constituents who find they must deal with public bodies with ever lower standards for

^{1*} User needs not Government needs.

mishandling their information. **Costs will go up due to the data processing mistakes** - the demonstrable [failures of the DWP PIP assessment process](#) will be replicated throughout the public sector, from the [Home Office](#) to [NHS](#). This other [NHS immigration](#) example is a complete breakdown of Whitehall departmental coordination - adding DCMS harms data work that [relies on coordination functions](#).

Sneaking powers into the Data Protection Bill at Lords Committee stage when it too late to give them suitable scrutiny, and then non-announcing a move of data responsibilities around Whitehall **does not appear to be a data policy grounded in trust and trustworthiness**.

Institutions routinely try to do whatever they wish with personal data, unless someone explains the consequences of their acts. Just as informed consent is only possible when a citizen has information to make a decision, the GDPR also requires institutions to explain their legal basis where previously they may have hoped no one would notice. When the public notice, plans often get watered down - as the [original excessively vague and broad Framework](#) already is. **Of the toxic legislative grabs originally in the Bill's framework, only the gift to DWP remains.**

Passing an [overly broad "framework for data processing"](#) may seem like a good idea if a Department doesn't care about the specifics or the consequences of a policy (since no consequences will fall on DCMS). But personal data, and individual level data derived from personal data, is solely about specifics - it is about people, it is about patients, about citizens, that all institutions prefer to deal with as abstractions. It is delivery departments that have to handle the consequences of their acts. **As constituents get left in a kafka-esque situation, it is MPs serving their constituents who will see the workload and the misery caused, not DCMS.**

While DCMS can do the same work as the Cabinet Office in theory, being a peripheral department in Whitehall terms means the citizen will always lose. As an example:

"When the Home Office requests information and it is not right for that information to be given to the Home Office then other departments will not do so"

- Theresa May, on tracing requests to the NHS from the Home Office, 2014²

"There has been a failure to appreciate the wider implications of their actions for the individuals concerned, for clinicians, and for wider public health. Their actions not only undermine public confidence in confidentiality but put at risk the efforts to build support for data sharing in other vital areas such as medical research."

- Health Select Committee, on tracing requests to the NHS, 2018³

It was not the former Home Secretary's job to ensure the framework was balanced, DCMS believes it will be able to do so, but provides no evidence to support that fantasy.

² Q76-78, The work of the Home Secretary, Home Affairs Select Committee, Monday 14th July 2014. <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/the-work-of-the-home-secretary/oral/11368.pdf>

³ www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/news-parliament-2017/mou-data-sharing-chairs-statement-17-19/

Officials wish to copy any data that affects their remit - and it is easy for officials consider the records in their area to be “their records”, rather belonging to the citizens and families whose lives they detail. No matter the good intentions, it is the loss of perspective that matters. A requirement, by the NHS or public services to report back to a citizen when their data has gone moves the burden onto those who wish to use data, and off the asset owners to make [secret decisions](#). Removing secrecy helps everyone, and builds, over time and demonstrable proper decisions, a trustworthy data environment.

DCMS is correct that the status quo in GDS is a failure of leadership and delivery. Moving leadership away from delivery and oversight will simply mean no one is accountable when a department makes a change that undermines other Government policy (including Brexit contradictions). **DCMS are too peripheral on substantive delivery decisions to have sufficient influence to resolve disagreements** - that role is the fundamental responsibility of the Cabinet Office. Whatever the post-Brexit “border” with the EU looks like, it is going to [rely on technology](#) - that is a data processing system covered by these rules that DCMS thinks it should write and referee.

We are sure the Secretary of State for DCMS will promise this will not happen on his watch. However, the last time he cited an “exceptional ministerial relationship” ([para 74](#)) and suggested he’d be in place to see a policy through, he didn’t make it 3 Parliamentary weeks before changing jobs. The next Secretary of State may be more interested in political horse trading than digital horse riding. The Cabinet Office has the recognition that if their actions cause a mess, they too will have to clean them up.

It is a fundamental conflict of interest for the sponsor department of the ICO to also write the rules and guidance for information processing across Government.

A [Chief Data Officer](#) was appointed under the previous Prime Minister, with the remit to improve data use across Government, but with the spend controls, delivery functions, and policy levers to push Departments in the right direction. **With the separation of spend controls and data policy, it will be impossible to appoint a Chief Data Officer who can deliver data improvements effectively.** Rather than making “[the connection between operational realities and data policy stronger](#)”, the link will be entirely broken.

DCMS is elsewhere proposing a Ministerially led data and ethics unit, which will set the rules for the use of AI by public bodies. Ministers writing ethics rules is entirely laughable - not because of malign intent, but because the political priorities of their successor will trump any good intentions.

AI is [just data processing](#). While DCMS may write guidance for “**ethical**” use of AI by **Government**, they can not write meaningful guidance that Departments must follow. As with the ‘Framework on Data Processing by Government’, it will be the lowest common denominator. AI may require some data processing departments to change significantly, and again DCMS can’t deliver anything other than guidance covered in caveats. If GDS could not ensure the [NCC1 form](#) could be completed digitally, what hope to DCMS have?

Nothing about this move will help a citizen, or a constituent.

Many lines in the Government [Technology Code of Practice](#) are important, but “the service should clearly communicate how data will be used” directly relates to data. For ongoing services, the best way to show a citizen how data about them will be used next month, is to show them how it was used last month. It is important for trust in Government that data use be communicated; but it may be in the short term interests of a project not to. It is the Cabinet Office’s job to balance such conflicts.

A better solution⁴ to deliver HMG’s priorities is for the data team in DCMS to move to GDS, rather than moving Government data policy to DCMS. If DCMS and GDS’s shared belief is that digital underpins future organisations, then putting all data and digital in one silo is counter to that principle. However, that does require a resolution to GDS’s leadership problems.

Many of the hard problems around data in Whitehall come from an over zealous desire to be able to do anything, even if there is no immediate expectation that the most Whitehall-possible reading of legislation will be used.

DCMS suffers the same affliction as those they regulate - expecting that the status quo will exist forever, and their weak data processing choices will have no [negative consequences](#). [Events](#) repeatedly prove them wrong.

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⁴ see <https://medconfidential.org/2017/on-what-principles-will-data-be-used-in-the-single-government-department/> and infiniteideasmachine.com/2017/04/what-does-a-citizens-view-of-government-look-like/