

Towards the new ICO – the Office of the Data and Information Commission

HMG has already [signalled a reform](#) to the structure of the ICO, turning it from a corporation sole to a body corporate as with its regulatory siblings (OfCom, OfGem, etc).

Responsibility for government data has already returned from DCMS back to GDS, replicating that move for the ICO as a clear statement – data use must comply with the rule of law.

As an early act to publicly recognise the primacy of the rule of law, and the importance of data in the UK, a Machinery of Government change should **move responsibility for the Information Commissioner’s Office back to the Ministry of Justice**, as a precursor to any other changes.

The CDEI should be restructured along the advice giving norms for the Senior Data Governance Panel in MoJ,¹ including most notably lay members (as the DHSC National Information Board had). Such a broad source of advice and input would increase the assurance across Government that the data views any departmental project is getting have a solid grounding beyond what a project team is willing to hear.

As such, **CDEI should not currently be placed on a statutory footing. Only after CDEI has been restructured to be fit for purpose, and consequently seen to work, should it be considered for placement on any form of different footing.** Although the restructure should make that unnecessary. Should Government attempt to place CDEI on a statutory footing in its current form, Parliament will provide the first opportunity for external scrutiny of CDEI advice and processes.

Creating the Office of the Data and Information Commission

The recent ICO review examined replacing the corporation sole of an Information Commissioner with a panel as with all the similar regulators, which will require a new Data Protection Act – providing an opportunity to simplify the legislative complexity with how previous incarnations of HMG implemented the EU GDPR and the cronyism of DPA2018; delivering on the promises of new technology while minimising harms.

The replacement for the ICO should not be an ‘everything’ regulator simply because computers are involved.² The narrow focus of those who focus solely on ‘data protection’

¹ Our early thinking on this model started with major reforms deriving from the various Justice Councils inside MoJ; however, the recent announcement by HMCTS/MoJ of the Senior Data Governance Panel is a much stronger and more structured base for informed debate and competent advice on information governance issues, subject to full implementation over the next few months. However, even problems in the implementation can be reformed over time given the potential strength of the SDGP structure, if balanced appointments are made. Other options are the Confidentiality Advisory Group in health.

² The ICO has many MoUs with the regulators of other sectors, and we see no reason for that arrangement to change. There may be questions about parts of some MoU, but the approach works, and respects the remit, integrity and competencies of different regulators while minimising turf wars.

without any wider understanding of human rights has created a narrow narrative around Brexit which allows a narrative of “remove the burdens from the EU GDPR and replace it with a British Data Protection Act”, that “will get rid of those annoying cookie banners you have to click to read any website”.

The question is whether UK citizens are thrown to the whims of data predators, or protected as with the 2018 DPA. A replacement DPA should integrate data protection principles, largely unchanged for decades, with the UK’s Human Rights Act 2000 and Equality Act 2010.

The large difference between data in the private sector and data in government is the distinction in Government between a data processor and data controller, whereas in large tech companies they are the same thing. It was this failure of understanding which meant the DeepMind project with the Royal Free Hospital was unlawful. Many large tech companies desire a change in the law so they can do what they wish without breaking it.

Departmental responsibility for the ICO should move from DCMS back into the Ministry of Justice, reflecting the new heading in the new [Data Ethics Framework](#) – ‘comply with the law’ – and the Government’s clear commitment to the rule of law, and reflecting the Machinery of Government change to move responsibility for government data from DCMS back to Cabinet Office.

This will correct the [misstep](#) of 2015 when the UK was preparing for the 2018 Data Protection Act, and emphasise the new Government’s commitment to a data ecosystem respectful of law. Such a move is an effective way to encourage MoJ to [institutionally improve](#) their data processes before it fails a [DfE style](#) audit or a [larger event undermines the Government](#).

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