

medConfidential response to the DCMS Data Consultation

1. The “new direction” on which DCMS is consulting will make it harder for people to understand what is being done with their data, easier for companies and authorities to use it beyond people’s expectations¹ – and more likely that things will go wrong in the public’s view. The Government has failed to explain why promoting “growth and innovation” means weakening people’s rights, or legitimising what has already been found illegal.
2. The expansion of legitimate interest would mean *any* entity supplying, say, the NHS could re-use data they acquired to charge the NHS more, and so will undermine functioning markets in favour of incumbents or larger entities. To avoid data leakage at every step along care pathways, should these proposals be implemented, every contract the NHS has formed which involves data – or which *could* involve data – would have to be checked, and in many cases, significantly rewritten.
3. Given the simultaneous complexity and lack of clarity of these proposals – most specifically the abolition of a *general* data protection regime, to be replaced with several specific data protection regimes – and the scope for unintended consequences where these different models interact, this consultation is more akin to a Green Paper that would normally (where Government showed proper regard for due process, anti-corruption, and the rule of law) be followed by White Paper.
4. On one specific point, as there is no proposal within this consultation to repeal the health exemption to the data sharing powers within the Digital Economy Act, that exemption should remain in place; no argument has been offered why it should not. The document contains few details on how parts of government plan to do things differently. We therefore presume any special pleading on the part of Departments will be subject to a further consultation – unless Government plans to approach accountability for data the same way it approached accountability for Owen Paterson.

Creating a ‘technicality paradise’ for fraudsters and charlatans

5. The first people in line to use ‘enhanced technical means with reduced oversight’ will be fraudsters and charlatans targeting the most vulnerable, just as we saw with the Pharmacy2U debacle.² Lowering the bar for those who misuse data versus those who (have to) maintain high standards will tend to hinder the honest while empowering the dishonest.³
6. On another specific point, while we have no objection to the removal of cookie consent pop-ups for absolutely *necessary* cookies – i.e. those over which individuals already cannot exercise control – these are the only pop-ups for which mandation need not exist. We note existing law does not require such intrusive banners; as things stand it is only *optional*, i.e. intrusive, tracking for which pop-up banners are necessary. Unfortunately, predators within digital ecosystems prefer to obscure this issue. The Government response to this consultation will indicate whether this Government truly supports vulnerable citizens, or the predators that are targeting them.
7. We support the Biometrics and Surveillance Cameras Commissioner’s response to the consultation.⁴ If the proposal to move the SCC and BCC role(s) *into* the ICO goes ahead, responsibility for FoI and EIR should be moved *out* to a new body under the Ministry of Justice.

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¹ <https://www.thetimes.co.uk/article/testing-firm-can-profit-from-sale-of-covid-swabs-w6vkb2f2f>

² <https://web.archive.org/web/20160304160022/https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2015/10/online-pharmacy-fined-for-selling-customer-details/>

³ <https://bylinetimes.com/2021/11/03/governments-proposed-data-reforms-would-hinder-the-honest-and-empower-the-dishonest/>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1030248/BSCC_DCMS_Consultation_Response.pdf