

The Case for a Data Code of Ethics for Professional Bodies

Monday 16th March, 2020

The All-Party Parliamentary Group for Data Analytics (APGDA) was delighted to host a remote panel discussion on Monday 16th March 2020. The discussion brought together a range of sector leaders to look into how professional bodies and associations are developing codes of ethics that can respond to the increased use of data in a number of policy areas.

The discussion was chaired by **Darren Jones MP**, Vice-Chair of the APGDA, and included responses by; **Debrah Harding** - Managing Director at the Market Research Society, **Chris Combemale** - CEO of the Data and Marketing Association, **Peter Wright** - Managing Director of Digital Law UK, and **Maggie McGhee** - Executive Director for Governance at the ACCA.

The call was joined by a number of key figures from across the sector.

Darren Jones opened the discussion by introducing the work of the APGDA, including his work as a co-chair of [Trust, Transparency and Tech](#) - a report by the Group which introduced a range of key themes to how public and private sector bodies can coordinate on the ethical use of data in a range of areas.

Mr Jones continued by noting how current discussions regarding data were very much focused about the practical application of data technology within the public sector. He said that since entering Parliament in 2017 the discussion on the subject had progressed greatly. At present, parliamentarians are now discussing how they can “operationalise” the discussion around technology and data ethics - as well as taking a more coherent approach to public policy outcomes. Many of the current regulatory aspects affecting the use of data by government and parliament are blunt tools. The current question is how they can be implemented in a more effective way by the public and private sectors.

Debrah Harding of the Market Research Society began by noting the key challenge for professional bodies as being one that was ultimately rooted in that of outdated systems. She said that many of the current uses of data were hampered by technology that was too archaic to process it. Many large data sets are still unable to be coordinated across different sectors. She noted that data ultimately has a short “shelf-life” and there is an opportunity cost in them becoming obsolete before they can be properly processed. At present, there is no single approach for the use of data in this respect. She cited the example of Supermarket loyalty cards as properly scrutinising trends.

Harding added that there is also a question in many organisations being fixated on asking the 'how' but not the 'why' of consumer data. She said that there was need for effective scrutiny and that discussions regarding the processing of data should go beyond purely the question of 'legal' and towards 'ethical'. In the purest sense, 'ethics' affects people being able to make decisions in the context of their own environment. It is vital that people have confidence in the way in which such data practices are communicated. Currently, the focus has been on legal obligations, but not on making consumers properly aware of how their data is used. Members of the public are broadly aware of what is happening legally, but not what this means in practical terms. Harding noted that up to 75 percent of people have no understanding of the terms of reference when they buy a product. She added that there is also a question about the use of language. Terms such as 'big data' are often off-putting and do not properly resonate with the public. She said that there was a need to develop a lexicon that fits for the right number of people. This feeds into a wider need to create global principles for ethical data use that is suitable for as large a number of individuals as possible.

Chris Combemale of the Data and Market Association began by noting that his sector had been successful in recent years in moving the conversation about data practice and innovation to a new sector. Major technology giants such as Google, Amazon, Facebook and Airbnb are now moving towards developing a framework of "intelligent marketing". This is a system in which AI and Machine Learning can develop new methods of data collection that work across different areas of the economy. Technology such as Amazon's Alexa are now able to communicate their data with corporate AIs and databases in a way that divorces one barrier of communication - person-to-person - from another, in this case orders being fulfilled by chatbots. There are benefits to this form of technology where machines increasingly act as intermediaries between companies and people, which can help to create long-term sustainable relationships - but considerable ethical risks as well.

Combemale noted that it was vital for organisations to need to build an environment based on a code of principles of: putting the customer first, respecting privacy, accountability, honesty, and transparency. He added that it was possible to ensure the proper application of these regulations by building upon the current GDPR framework to ensure that codes of ethics are reached by a range of different sources. He added that creating a principle of co-regulation is vital in bringing together industry associations with regulators, as well as ensuring a level of harmonisation of data regulation. He concluded by noting that guidance from industry associations is also vital.

Peter Wright from Digital Law UK began by noting the rapidly changing nature of regulation in the area of data regulation. He noted the presence of a dividing line between talking about data around a range of sectors, as well as the split in how such data is used. From an ethical perspective, optimising data is most successful when it is fully anonymised. He noted the long-standing issues with regard to how the internet of things is establishing a host of connected technologies that have a lack of personal engagement with users. Mr Wright added that this could create ethical issues, such as data collected by household AI speakers being used by third parties. He noted that large corporations are increasingly

making use of these data sets. Likewise, the deployment of data is being further accelerated by the rise in interest for how such information can be used to combat public policy issues such as Net Zero and climate change more generally. The aforementioned increase in the Internet of Things with data-collecting software across a range of sources from vehicles to fridges, to toys. He cited the recent example of the connected doll *My Friend Cayla*. Originally launched in 2014, the doll used speech recognition technology to “talk” with the user. It was subsequently found to have a number of serious security flaws and to be easily hackable. [It was subsequently criticised in many countries and is banned from sale in Germany under the Federal Telecommunications Act.](#) Mr Wright noted - however - that it should not be hard for regulators to allow industry bodies to comply with their own business obligations. He cited matters such as black box AI, the rapid adoption of GDPR into UK law, and the various challenges associated with the EU’s draft Privacy Legislation as being clear examples of future challenges for privacy regulations. He also noted how smart devices such as Fitbits could fall into the complexities of the post-Brexit legal landscape. His ultimate message was the challenge for policy makers being set in how to encourage innovation whilst protecting data subject rights across the UK.

Finally, Maggie McGhee of the ACCA turned into the key points arising from the chartered accountancy sector. As the industry body, the ACCA has a large public interest remit with ethics hard-coded into from the leadership down to individual accountants. She noted the need to develop an effective code of ethics from across the sector. She noted that the term ‘effective’ has two key dimensions to it. It is vital that they are proportionate, but that they are also able to be adapted across the widest possible user base. Working across operation norms can be done effectively, but only by taking a proactive response. Ms McGhee said that the ACCA has adopted a wide-ranging training programme into data ethics and data analytics, noting that future members will have to adapt to future technologies. The ACCA is also working extensively across the wider economy to ensure that they are part of a profession-to-profession body, but also fit into an international standard of best practice. She added that an effective code of ethics is one that is better optimised for the whole swath of the business, not purely the use of data in of itself. She agreed with previous participants with regard to the benefits of collecting data in a purposeful and effective means, as well as the concept of “defragmentation” and ensuring that all data use is maintained in an effective way. She said that the key benefits from effective data collection are ones that reach across individual entities, but it is vital to move away from the microlevel to harnessing and sharing data in a trusted common pool that can be shared with regulators and the wider public good.

The panel then responded to a number of submitted questions.

Question One - Should there be a common code of ethics for the use of healthcare data?

Chris Combemale said that there was a huge amount of public benefit that could be used in this area by pooling together large data sets from medical resources. However, he added that the conversation in this area needed to go beyond simply having a code or a set of ethics, but needed to incorporate a

means by which the wider public could be engaged in conversation with the wider public. He noted that an example of how such exercises could go wrong was a leaflet set out by NHS England asking for households to give their consent for their personal data to be collected. The poor way in which the reasoning and rationale behind this was communicated resulted in a huge outcry from the general public and was seen as being counterproductive.

Debrah Harding added that some of the data that is being collected is being used very effectively, but there should be a model of best practice based on that currently used by other research sectors. Individuals wishing to use medical data in a controlled fashion would be allowed to do so on a sign-up to use it, but would also have to be members of a professional body and have agreed to abide by a signed, recognised code of ethics. As an example of poor practice - [she cited the use of Google DeepMind as part of an agreement with the Royal Free Hospital](#). The whole project was very controversial and despite some successes, the Information Commissioner's Office subsequently ruled that the NHS Trust responsible had failed to comply with the Data Protection Act in how it had handled the data of 1.6 million individuals.

Darren Jones spoke about the lack of debate as to how such agreements are being taken forward by Government and other policy makers. He cited the exclusivity deal with the NHS and Amazon over using the Alexa personal assistant as part of the 111 Service. Although the agreement has a number of benefits, he noted that it was signed without any clear terms of reference, public debate or parliamentary scrutiny. He added that there was also very little effort being made to help show the public good resulting the deal, saying that the use of the data very much favouring Amazon.

Question 2: Which body or bodies should have regulatory power and oversight over codes of ethics?

Chris Combemale said that the current regulatory landscape was complex, but that the Information Commissioner's Office should focus on the regulatory and legislative side of things. He said that the roll-out of GDPR had done an effective role in assisting with many of the wider regulatory aspects, but that it needed to respond to new technologies as appropriate. He said that this was a clear path for the Centre for Data Ethics and Innovation to follow. However, it would not be an especially relevant one for the ICO.

Debrah Harding said that the model of co-regulation based around statutory legislation provided perhaps the most appropriate model for the future. A range of actors fulfilling their remit but within a broader ethical framework could prove effective. The current situation of combining ethics at a professional level with a regulatory framework indicates that there is no single regulator best placed to do this. She added that successful regulation would have to cross over to a range of different areas. Different types of data needed to rest around

Maggie McGhee agreed, noting the unsuitability of all aspects of data ethics being governed by a single regulator. If there was, it would be one that would be set to fail. However, a common set of values would be ideal and be the best placed to ensure public trust and transparency. This would need to be taken into account by the Government as part of any future reviews.

Peter Wright said that his experience of dealing with the ICO was a quite pragmatic one. There was grounds for taking a hands-off approach in many areas of public policy. He said that the initial range of large fines by the ICO following the introduction of GDPR were very much done with a view to establishing a statement of intent. He added that an overarching regulator was perhaps the best placed to monitor industry actors, but that professional bodies could have a role in regulating their own sectors and feeding into the wider regulator framework. From a legal perspective, multiple regulators over different sectors always had pressures. However, he said that it was essential to avoid any ambiguity in the nature of such rulings.

Darren Jones made an observation about the resources available to the ICO in this area. He said that they needed to cover a range of different areas. The Online Harms Bill originally envisioned a new regulator for the internet and social media - but that they could not accommodate the demands within the ICO without a considerable rise in their power and scope. The Government have subsequently suggested Ofcom as the main regulator for this area. Mr Jones added that oversight and enforcement needed to balance the pressures of public good and censorship. He added that the Centre for Data Ethics and Innovation had a major role to play in developing these arguments.

Question 3: How has Brexit affected the regulatory landscape - how can we adapt a consistent level of regulation across the UK and EU that does not affect immigration?

Chris Combemale said international bodies such as the [Federation of European Direct and Interactive Marketing](#) (FEDMA) and the [European Data Protection Board](#) (EDPB) were trying to find a common, Europe-wide code of ethics. He noted that the current situation offers a two-tier system accommodating EU-wide regulation as well as those of national Data Protection Authorities. He noted that the latter helps to accommodate legal and cultural differences across a range of different countries. Present policy by the European Union serves to promote harmonisation - which currently takes place almost by default. Mr Combemale added that across the wider EU polity, it was vital that there was a level of consistency for the data and market sectors and that more established industry codes would assist with this.

Debrah Harding said that she was currently working on a common GDPR research code with the ICO and with the wider European network of market research societies. She said that the reality was that GDPR was a hybrid bill that - in a research context, was very much focused towards a range of different sources. Adding that research regulations differ considerably across the European Union - even between countries with similar cultural and legal jurisdictions such as the UK and Ireland - it would be inevitable

that there would be a degree of divergence. At a practical level, the legal divergences between the UK and the EU also limited the standards for a single means of regulation.

Maggie McGhee added that that it was vital to allow for businesses to be able to work across a range of different boundaries and at least have a sense of the common issues affecting each area.

Darren Jones said that there was an additional dimension to be made regarding international regulations - noting that data policy was now being seen as an increasingly important part of future trading deals. He said that there was very little said about data flows in the proposed Free Trade Agreement with the EU, but that it was an extensive element of the draft negotiating statement with the United States. He added such views pose a question about the future of the sector and where data fits within a common ethical framework.

Question 4: Is there a consistent style of language to be used across codes of conduct - how can we adapt a common ethical framework as well?

Debrah Harding responded by saying that currently, regulation fits across a range of different sources. As a result of this, any future regulation would need to serve across a hierarchy of social and legal practices. The Market Research Society in particular works across a range of different figures and recommendations. As such, she said that ethical insight would be a vital part of responding to such ethical considerations. How human rights would fit into such a framework would be a matter of considerable debate - but it would serve to occupy a range of questions such as rights to privacy and where the limits of such discussion would be reached.

Peter Wright said that the question of human rights and privacy are vital. He noted that such questions naturally fit into older debates about the role of Artificial Intelligence and Machine Learning - as well as the risk of categorising individuals and at-risk groups in a way that would damage their right to privacy and also find non-ideal outcomes for them. He said that Machine Learning in particular could make assumptions about different data sets for individuals.

Finally, Chris Combermale noted that Data Protection Agencies across Europe, including the ICO, had to ensure that they were responsive to sudden demands for data and also to accommodate the spread of information. He noted the ongoing and developing crisis with regards to Covid-19 as being a clear example of where such bodies would need to be responsive and reactive to new and emerging threats.

Darren Jones concluded the session by thanking all the participants for their contributions to the discussion. He said that the APGDA would continue to make overtures in the near future regarding the matters raised, and would also ensure that the APGDA would continue to function during the current crisis.