

**The Committee on Standards in Public Life  
Standards Matter 2: Public Consultation**

**Written submission from Dr Marion Oswald, Vice-Chancellor's Senior Fellow in Law, Northumbria University; Associate Fellow, Royal United Services Institute; Chair, West Midlands PCC and West Midlands Police data ethics committee**

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**Introduction**

1. This brief submission sets out my personal views and does not represent the views of Northumbria University, RUSI, West Midlands PCC or West Midlands Police.
2. The submission reflects my experience and research in respect of the use of AI and data analytics in the public sector.

**Standards of Conduct in the UK**

3. There have been a plethora of ethical standards for AI and data analytics developed over recent years, which are largely yet to translate into practical operational guidance (Babuta, Oswald and Janjeva, 2020, p.33 and Annex).
4. Some of these frameworks (for instance the Government's Data Ethics Framework) have attempted to incorporate factors and questions that relate to the Seven Principles, transparency for instance. However, reference specifically to the Seven Principles is not common as far as I am aware. Therefore, the responsibility of the *individual* in respect of such projects is often not clearly addressed, whereas the Seven Principles address themselves to public office holders and their responsibilities (to act objectively, using the best evidence and without discrimination and so on).
5. Furthermore, frameworks tend to focus upon assessment of the project itself in an attempt to make it 'more ethical' (Data Ethics Framework). However, this overlooks the lack of clear 'red lines' or compulsory factors in ethical considerations, the potential conflicts between different considerations and factors, and the importance of *law* in guiding both technological development and the wider contextual implementation and consequences. The proceedings of the West Midlands PCC and West Midlands Police data ethics committee since its inception demonstrate that the technical and statistical aspects of data analytics should not be isolated from the legal, contextual, operational and ethical considerations, as each will influence the other.
6. The recent emphasis on ethics in the evaluation of public sector data analytics – without corresponding practical/operational guidance, understanding and application of law, and personal responsibility as laid out in the Seven Principles – could have a number of consequences. First, ethics could be viewed as separate from, or a barrier to, operational capability. Secondly, law (and in particular the key principles of necessity and proportionality and the principles of administrative law) may be side-lined. Thirdly, ethical principles could in fact obviate personal responsibility for assessing the value and consequences of AI objectively using all relevant evidence and factors.

## The Seven Principles of Public Life

7. I would recommend that consideration be given to adding ‘Lawfulness’ as a principle. While it could be argued that ‘lawfulness’ should go without saying, recent events linked to Brexit, uncertainties brought about by the pandemic and the impacts of digital technologies indicate the importance of the rule of law. A new principle of ‘Lawfulness’ could be expressed by reference to Bingham’s principles of the rule of law: ‘Holders of public office should take decisions and exercise power conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably, in accordance with proper process and having due regard to appropriate legal advice.’

8. In the context of data analytics and AI, there could be considerable value in developing specific guidance on the application of the Seven Principles in the context of AI projects using case-studies such as the Ofqual algorithm, which raise particular issues in terms of objectivity, accountability, openness and leadership. In such application a three-pillar combined approach could be adopted:

<b>Governing legal frameworks</b>	<b>Ethical/Nolan Principles</b>	<b>People:</b> recruitment, personal responsibility, training, culture, senior management commitment, accountability of all
<b>Scrutiny and oversight</b>		

## The UK's arrangements for regulating standards

9. As the Committee will be aware, oversight and regulation of data analytics and AI within policing is a topic of ongoing debate. The West Midlands PCC and West Midlands Police data ethics committee (the first of its kind within UK policing), despite being badged with the ethics label, performs a wider independent oversight function, contributing to consideration of questions of scientific validity, legal proportionality and operational context. I would suggest that this experience demonstrates the inadvisability of attempting to separate ethics/standards from the wider context in terms of oversight and regulation. This is reflected in the recommendations of Babuta and Oswald (2020) for an integrated impact assessment for data analytics within policing, to be reflected in HMICFRS’s inspection regime.

10. The terms of reference of the West Midlands committee illustrate an attempt to lay out principles relevant to the policing context against which projects will be assessed, together with a non-exhaustive list of questions and factors to be investigated in order to provide pragmatic advice. However, although the Chief Constable and PCC commit to have regard to the committee’s advice and to set out reasons if the advice is not followed, the committee has no statutory or regulatory status and its future is subject to both financial and political changes.

## Best practice in standards regulation

11. As the Covid-19 pandemic has demonstrated, much public sector decision-making is made in a context of uncertainty. This is particularly the case where innovative technologies are to be deployed and thus it is difficult to assess the potential benefits and harms and to

come to a conclusion regarding the required necessity and proportionality tests and in respect of ethical standards.

12. In order to address this, I have previously proposed that, combined with a robust and rolling oversight function, a model of 'experimental' proportionality review could assist in upholding a fair balance between the rights of the individual and the interests of the community in situations of uncertainty and crisis, in order to enable public bodies to move ahead with the piloting of new technologies while providing the public with reassurance that the consequences would be independently overseen (Oswald and Grace, 2021). I would be happy to provide more information to the Committee.

### **Creating ethical cultures**

13. In my view, the three-pillar approach mentioned at 8. above is key to embedding the Seven Principles within a public sector organisation's culture, crucially including a commitment that personal responsibility for standards is supported at – and by - all levels of the organisation, supported by processes by which employees are encouraged to raise and discuss ethical dilemmas, which are then addressed openly by senior management.

14. Achieving the above embedding, and an appreciation that law and ethics are not separate from, nor barriers to, operational capability, represent two of the most significant challenges to creating ethical cultures in my opinion.

**Marion Oswald**

17 January 2021

### **References**

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<https://www.westmidlands-pcc.gov.uk/ethics-committee/ethics-committee-reports-and-minutes/>

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