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‘Data: a new direction’: Response to consultation

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Overview

1. This submission stresses the need for the Department for Digital, Culture, Media, and Sport to engage with children and young people in the process of developing its new data protection regime.
2. If engagement with children and young people does not happen, then the Government’s data strategy risks failing in its aim to create a data protection regime that maintains public trust in the responsible use of personal data.
3. This can be remedied by developing a children and young people’s engagement strategy, which ensures (a) that information about the Government’s proposed new data protection regime is made available to children and young people in a form that meets their needs, and (b) that children and young people’s views about how their data is used are both listened to and fed into data policy. This strategy should be underpinned by a respect for children’s rights and draw both on current good practice in engaging with children and young people and the views of children and young people themselves.
4. This submission sets out my personal views. It reflects my own research and the findings of research conducted by the AHRC-funded Observatory for Monitoring Data-Driven Approaches to Covid-19.

Children, data, and data-driven decision-making

5. Children and young people have been affected both directly and indirectly by the pandemic and by data-driven decisions taken in response to the pandemic. The use of algorithms to determine students grades in August 2020, following the cancellation of summer exams, is the most obvious example of how data-driven decision-making has impacted upon young people. Children’s privacy has, however, also been impacted by requirements for older children to disclose personal health information to NHS Test and Trace and to schools, either to enable contacts to be alerted or so that mitigation measures (face masks, self-isolation, PCR tests etc) can be put in place. Children’s health and wellbeing has also been impacted

by data-driven policy which resulted in the closure of schools and a national lockdown (<https://www.childrenscommissioner.gov.uk/wp-content/uploads/2020/09/cco-childhood-in-the-time-of-covid.pdf>; <https://www.barnardos.org.uk/sites/default/files/2021-02/supporting-hidden-victims-of-COVID-19.pdf>)

6. The Observatory for Monitoring Data-Driven Approaches to COVID-19 (OMDDAC) is a collaboration between Northumbria University & the Royal United Services Institute (RUSI), funded by AHRC, which has been researching data-driven approaches to Covid-19. As part of OMDDAC's commitment to equality and diversity, OMDDAC worked with a children's organisation, Investing in Children, to explore children's views about the Government's data-driven approach to responding to the pandemic. 17 young people aged 11-18 provided their views to OMDDAC, either by attending an agenda day (an online discussion) or by means of an online survey.
7. The young people commented explicitly upon the Government's use of wastewater testing and the sharing of information derived from such testing; upon self-isolation requirements, the disclosure of information about self-isolation requirements, and the monitoring of self-isolation; and upon the use of algorithms to determine exam grades. Concerns were expressed by some young people about a failure to seek consent to use their information, some expressed concern about information sharing with certain bodies (notably the police) and some expressed a view that they would feel uncomfortable with the sharing of non-anonymised data, even for the public good. This research whilst small scale in nature indicates that some young people do have views about how their data is being used.
8. The young people commented also on how they had obtained information about data-driven decision-making and upon their inability to feed views into policy and decision-making. OMDDAC's research with children confirmed that many children want their views to be heard and listened to. Two quotations from the agenda day report make this point clearly:
'Without any hesitation, definitely the young people would have wanted to be asked about the decisions being made, as it was their future so they should have a say. They said that if they were asked about wearing masks they would have agreed in a heartbeat as they would rather wear a mask than work on a laptop virtually at home.'
'Young people are not considered enough, especially when the pandemic has affected them massively. People doing exams this year and last year, such as GCSEs, weren't even considered when forming a plan and making big decisions about their futures.'
These remarks are reflective of comments made by numerous other children and young people during the pandemic; children and young people want policy makers to listen and act upon their views (e.g. <https://www.barnardos.org.uk/sites/default/files/2021-02/supporting-hidden-victims-of-COVID-19.pdf>; <https://www.girlguiding.org.uk/globalassets/docs-and-resources/research-and-campaigns/girls-attitudes-survey-2021-report.pdf>).
9. Children are increasingly becoming 'datafied' because the services and institutions with which children engage are all now data-driven (health providers, local authorities, schools). The pandemic has resulted in increasing numbers of children moving online to engage with their peers and to increased use of commercial educational technology, and thus to still greater data collection and datafication. Barassi has suggested that 'post-pandemic these

datafication processes are only intensifying and that ‘understanding these processes ... and investigating our society’s attitudes to personal data’ should be a top priority (Veronica Barassi, Data Child Citizen, 2020).

10. The data protection regime of course affords protection to everyone’s personal data, including children. Indeed, it recognises the ‘special protection’ that should be afforded to young people. In *Data: A New Direction*, however, the section ‘Who we are seeking to consult’ (page 143 of the consultation) nonetheless, makes no mention of children or seeking their views, either directly or via organisations representing their interests.
11. There appears also to be no evidence of engagement with children and young people in the formulation of the UK data strategy (<https://www.gov.uk/government/publications/uk-national-data-strategy/call-for-evidence-and-roundtable-engagement-summaries>).
12. The Government’s 2018 Consultation principles confirm, however, that consultations should ‘consider the full range of people ... affected by the policy, and whether representative groups exist.’ It suggests that steps should be taken to ensure all affected individuals should be made aware of consultations and able to access them, with consultation tailored ‘to the needs and preferences of particular groups, such as ... younger people.’
13. Children are the best people to comment on how *they* feel about their data being collected, shared, manipulated, or amalgamated with other data. It cannot be assumed that adults can be relied upon to speak for children, that they understand children’s concerns or have the same interests.
14. In data policy, however, children are frequently characterised as incompetent and lacking capacity to exercise their rights or provide meaningful input. Parents are judged to know best. Such attitudes inhibit children’s ability to take decisions about their own right to privacy. OMDDAC’s research suggest it is wrong to assume that children are incapable of protecting or expressing an opinion on their privacy.
15. Children are afforded their own, significant rights under the UNCRC, relevant here being: the Article 3 right to have their best interests treated as the state’s primary consideration; the Article 12 right to be able to express their views on matters affecting them and to have those views given due weight; the Article 13 right to freedom of expression and to seek, receive and impart information; and the Article 17 right of access to information; the Article 16 right to privacy.
16. In the process of developing a new data protection regime careful thought should be given to how best to engage with children and young people to ensure appropriate respect for these rights. Article 4 UNCRC stipulates that States ‘shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.’
17. Paragraph 17 of the consultation describes the consultation as ‘the first step in delivering on Mission 2 of the National Data Strategy to secure a pro-growth and trusted data regime.’ It is suggested that the next step in the process of developing a new, trusted data regime, must involve engagement with children and young people.
18. The children who responded to the OMDDAC research suggested several routes that could be used to engage with young people and to ascertain their views, including schools, surveys, social media, and youth organisations. Recognising that not all children and young people are in mainstream education, and that some young people have limited access to

digital technologies, a range of different engagement methods should be considered to meet the diverse needs of this group.

19. Paragraph 17 states that 'the government is committed to working with partners across all sectors and parts of the UK to secure an even better data regime.' In developing its engagement strategy, the Government should consider partnering with one of the many organisations which work to promote the rights, views and interests of children, organisations which also have expertise in engaging with children and young people. Research with children undertaken during the pandemic, illustrates clearly, for example, how partnership with Children's Commissioners and youth parliaments can afford governments' insights into the child's perspective (see, for example, https://www.childcomwales.org.uk/wp-content/uploads/2020/06/FINAL_formattedCVRep_EN.pdf);
20. To ensure children are fully informed, and that they can thus exercise the related right Article 12 right to express a view, children must be afforded information in a manner that is accessible and understandable to them. Providing information on Government websites is unlikely to be sufficient. The young people who provided their views to OMDDAC stated that they found the Government's website 'difficult to read and understand' and 'difficult to navigate.' A similar view was expressed in work by Members of the Scottish Children's Parliament. They offer suggestions for how accessible information can be made available to children and young people (<https://www.childrensparliament.org.uk/childrens-journal-5/>);
21. In summary:
 - (a) The Government should develop a strategy for engaging with children and young people to explore their views about the Government's proposed data regime
 - (b) A range of different methods should be used to reach different sub-groups (including those within and outside mainstream education and those with limited access to digital technology)
 - (c) Information must be provided in a manner that children and young people can understand
 - (d) Government should consider partnering with one or more organisations with expertise in engaging with children and young people.

Dr Claire Bessant,
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