

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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By email: cdeiconsultation@culture.gov.uk

Dear Sir / Madam

Consultation on the Centre for Data Ethics and Innovation

The Financial Services Consumer Panel is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. We would be happy to discuss the points raised in our response.

The Panel's main points are:

- DCMS should ensure there is diverse stakeholder representation in the Centre's governance arrangements, and that it fosters strong links with consumer organisations.
- The Centre should be placed on a statutory footing, with a duty on Ministers to follow the Centre's advice or explain to Parliament why they have not. The Centre should also have a duty to report annually to Parliament, and be given powers to compel information from firms. The Government should consider establishing a statutory Stakeholder Forum to advise the Centre on the consumer interest.
- DCMS should ensure the boundary between the Centre and the Information Commissioner's Office (ICO) is clear, and that there is close cooperation between the two. The ICO is already working on some of the issues we suggest below. It is important that this work is done, and done by the organisation that is best placed to do it in terms of skills, resources and impact.
- The Panel recommends that the Centre should:
 - focus on financial services as a key priority. This sector is at the forefront of innovation and acts as a blueprint for innovation in other markets.
 - tackle informed consumer consent, which is the foundation for greater data usage.
 - work on vulnerability/exclusion and the drivers of unethical behaviour.
 - Investigate and advise on transparency in the use of algorithms.
 - consider the impact of personalisation on pricing and the demutualisation of risk, including the consequences for financial and social inclusion.
 - evaluate the impact of its advice.
 - build stakeholder capacity to enable more democratic engagement with data and innovation issues.

Q1 Do you agree with the proposed role and objectives for the Centre?

Yes.

Q2 How best can the Centre work with other institutions to ensure safe and ethical innovation in the use of data and AI? Which specific organisations or initiatives should it engage with?

The consultation highlights the importance of the Centre developing links with regulators, academia and industry. Establishing relationships with consumer representatives is equally important. The Centre should consider a formal arrangement for engaging consumer groups in regulated markets, as well as others like Citizens Advice and Which?. Alternatively, the Government may want to set up a statutory Stakeholder Panel, with the job of ensuring that the consumer interest is embedded in the Centre's work. This could include representatives of wider civil society, particularly small businesses.

The international dimension will also be important, particularly in the context of the UK's withdrawal from the EU. The Centre should establish multilateral and bilateral links with other jurisdictions and establish/convene international fora. The FCA, in collaboration with 11 financial regulators, has recently created a Global Financial Innovation Network¹ so may be able to offer some insights.

We would also encourage the Centre to work with the FCA to consider how its successful work on RegTech, which seeks to develop new technologies to help overcome regulatory challenges, could be applied in other sectors to build regulatory technology into AI as it is developed.

Q3 What activities should the Centre undertake? Do you agree with the types of activities proposed?

The Panel supports the types of activities proposed. We also recommend that the Centre should evaluate the impact of the advice it gives.

The Centre should also seek to build capacity among stakeholders to enable more democratic engagement with data and innovation issues. AI and data usage can appear distant and difficult to understand, so consumer representatives can find it difficult to engage constructively. The Centre should encourage industry to build capacity among its constituency, but it should have overall responsibility for increasing the ability of consumer groups and wider civil society to engage.

Q4 Do you agree with the proposed areas and themes for the Centre to focus on? Within these or additional areas, where can the Centre add the most value?

Yes, but some are more urgent than others because of the pace of innovation and the uses and abuses of data that already exist.

It is not clear how the proposed framework will identify the most pressing topics and prioritise accordingly. While it is right that the Centre considers the application of data ethics and innovation across a wide range of sectors, the Panel urges the Centre to focus on financial services as a key priority since it is at the forefront of innovation, and is poised to enter a period (due to the implementation of Open Banking and PSD2) where greater use will be made of consumers' data, raising potentially greater risks. Addressing these risks will help to tackle harmful practices and uses of data before they become widespread. Focussing on financial

¹ <https://www.fca.org.uk/publications/consultation-papers/global-financial-innovation-network>

services would also help respond to the Government's call for views on the potential application of Open Banking-style approaches to other markets².

It will be important that the Centre is prepared to tackle the important and fundamental issues even if doing so raises questions over – or even impedes – present or imminent applications of data usage and AI.

In terms of the specific proposals, the 'analyse and anticipate' role with the Centre's proposed activities should incorporate risks under horizon scanning and assess these, including whether they apply to individuals, SMEs, regions, or even the UK.

Q5 What priority projects should the Centre aim to deliver in its first two years, according to the criteria set out above?

The Panel has several suggestions for priority projects which the Centre should carry out:

- **data sharing and consent** – the Centre should tackle head-on the issue of informed consumer consent. The Panel's recent research³ on this topic found that consumers are not giving informed consent when they share their data, did not read terms and conditions, and didn't understand them even when they did. Since informed consent is the foundation for greater data usage, it is imperative that the Centre tackles this issue urgently. Otherwise, questions will rightly be asked about how an industry can be ethical if most people sharing their data don't know or understand what they've signed up for. The Centre should also consider people's ability to control their data, keep track of where and when it is shared, and limit its use to the specific purpose for which they gave consent.
- **vulnerability/exclusion** – in the context of fairness, the Centre should examine the consequences for consumers who are unable or unwilling to share their data.
- **unethical behaviour** – the Centre could undertake research on what drives unethical behaviours in this field.

The Panel has some observations about the proposed project areas:

- The Centre should investigate and advise on transparency in the use of algorithms. Firms increasingly use algorithms to decide whether to give consumers access to a product, and the terms on which they do so. This can give the impression that a decision has been reached based on robust and fair analysis, which may not be the case. Firms may exploit irrelevant information about a consumer (e.g. their online search history) to identify their propensity to pay an inflated price. Algorithms should be transparent, and firms must be able to explain to consumers in clear and simple language how they have reached a decision on access and price.
- the Centre should consider personalisation, and its implications for pricing and demutualisation of risk. It should investigate urgently the consequences for access to insurance and credit (as well as other sectors), and financial and social inclusion. Big data increasingly offers insurers and lenders the means to individualise risk assessments, which could have a significant impact on risk pooling and prices and lead to cherry-picking of some customers and exclusion of others. This raises significant prudential issues for firms and regulators, as well as profound public policy issues of

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699937/modernising-g-consumer-markets-green-paper.pdf

³The Panel's Position Paper is at https://www.fs-cp.org.uk/sites/default/files/final_position_paper_-_consenting_adults_-_20180419_0.pdf and the research is available at https://www.fs-cp.org.uk/sites/default/files/fscp_report_on_how_consumers_currently_consent_to_share_their_data.pdf

social and financial exclusion. These require a comprehensive assessment of the risks, and advice on how Government should respond.

- While the Panel welcomes the proposed focus on fairness, DCMS should define and consult on what 'ethical' and 'fairness' mean, as they can mean different things to different people.
- The Centre should also consider redress. Currently the only access available to individual redress is via the courts. The Panel has previously recommended that Government should establish a Data Ombudsman to build confidence and trust.

Q6 Do you agree the Centre should be placed on a statutory footing? What statutory powers does the Centre need?

Yes. The Panel agrees that the Centre should have powers to compel information from firms, rather than having to rely on the relevant powers of sector regulators via the creation of gateways or Memorandums of Understanding (MoUs). The statutory framework should also:

- include a duty on Ministers to follow the Centre's advice or explain to Parliament why they have not;
- create a duty on the Centre to report annually to Parliament so that MPs can hold the Centre to account and question Government departments and regulators on their response to the Centre's advice and recommendations;
- (possibly) establish a Stakeholder Forum, to advise the Centre on consumer and other interests; and
- clarify regulatory responsibilities. The Panel has previously highlighted the risks of regulatory gaps and overlaps in the data/tech arena (e.g. between the ICO, CMA and sector regulators).

In considering the statutory framework for the Centre, and for the regulation of data more generally, the Panel repeats its recommendation that the Government should establish a Data Ombudsman. This would enable customers to obtain redress for misuse of their data where sector regulators may not be able to act.

Q7 In what ways can the Centre most effectively engage stakeholders, experts and the public? What specific mechanisms and tools should it use to maximise the breadth of input it secures in formulating its actions and advice?

Our answers to Questions 2 and 3 suggest how the Centre should gain input from consumer groups and civil society. Capacity building will be essential.

It is imperative that appropriate governance arrangements are also put in place for the Centre itself. These must feature diverse consumer representation as part of the Centre's leadership, including gender equality to help rebalance a sector that is currently dominated by men.

The Panel also suggests that the Centre could use a 'sandbox' to incubate innovative technology projects which promote ethical use of data, raise standards, and help consumers exercise control over their data.

Q8 How should the Centre deliver its recommendations to government? Should the centre make its activities and recommendations public?

Yes, the Centre should make its activities and recommendations public, as should the Government and regulators in responding.

Yours faithfully,

Sue Lewis
Chair, Financial Services Consumer Panel