

Regulatory Sandbox Final Report: The Ministry of Housing, Communities and Local Government (MHCLG)

A summary of MHCLG's participation in the ICO's Regulatory Sandbox Beta

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Information Commissioner's Office

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1. Introduction

- 1.1 The ICO introduced the Sandbox service to support organisations who are developing products and/or services that use personal data in innovative and safe ways and where such products and/or services deliver a potential public benefit.
- 1.2 In order to develop the Sandbox, the ICO initially launched the Sandbox as a beta phase, for an initial group of participant organisations during 2019 - 2020.
- 1.3 The beta phase provides a free, professional, fully functioning service for ten organisations, of varying types and sizes, across a number of sectors.
- 1.4 Organisations who were selected for participation in the Sandbox beta phase have had the opportunity to engage with us; draw upon our expertise and receive our advice on mitigating risks and implementing 'data protection by design' into their product or service, whilst ensuring that appropriate protections and safeguards are in place. The Ministry of Housing, Communities and Local Government ('MHCLG') was one of the candidates selected for participation in the Sandbox beta phase.
- 1.5 MHCLG entered the Sandbox with a proposal to address the low quality of privately rented housing in the Blackpool area through a housing quality pilot. This work would include putting together a dataset which would be used to gain a better understanding of the private rented sector in the area, form an updated census, and provide the intelligence needed to drive enforcement action against landlords who fail to maintain adequate standards of rented housing for tenants. Data held by Blackpool Council and the Department for Work and Pensions ('DWP') was identified as being valuable to the pilot dataset. MHCLG intended to explore the associated data protection challenges within the Sandbox, including compliance with the lawfulness, purpose limitation, data minimisation, and security principles of the General Data Protection Regulation (GDPR).
- 1.6 A scoping meeting was held between representatives from MHCLG and the ICO Sandbox team in London on 8 August 2019. Following on from this, objectives for MHCLG's Sandbox participation were agreed and the Sandbox plan was approved and

signed off on 12 November 2019. A further workshop was held on 16 January 2020 where a number of topics were discussed and actions agreed.

- 1.7 In March 2020, as the coronavirus pandemic progressed, MHCLG found itself unable to actively participate in the ICO Sandbox due to the necessary diversion of resources to the COVID-19 response, and the Blackpool pilot was paused indefinitely. It was agreed that to support MHCLG and to make best use of work that had been done, the Sandbox would put together a comprehensive review document to inform the Blackpool pilot and similar data sharing projects in the future. The report would outline the different areas that MHCLG would need to consider and address prior to the collection and matching of the data required to deliver the project's aims.
- 1.8 This report outlines the work that MHCLG had carried out prior to March 2020 with support from the ICO Sandbox, and an overview of the topics covered within the considerations document shared with MHCLG in October 2020 ("Considerations Document").

2. Executive summary

- 2.1 The following objectives for MHCLG's Sandbox participation were agreed, to be achieved alongside steers provided from the ICO:
 - **Objective 1:** Assess the value of each dataset identified for inclusion across the three organisations, to ensure that only accurate and relevant information is included and matched.
 - **Objective 2:** Establish a lawful basis for the proposed data use and linkage, this will include exploration of whether the parties involved hold the necessary legal powers and further consideration of the lawful bases for data processing under data protection law. The conditions for processing of special category and criminal offence data required for the pilot will also be considered.

- **Objective 3:** Develop and test out privacy information to inform data subjects of how their information will be used and shared through the pilot. This may have required updates to privacy notices across the three organisations and notifying data subjects affected by any re-purposing of data collected.
- **Objective 4:** Identify risks posed by the data sharing initiative and establish technical and organisational measures for implementation across the three organisations, in order to protect the security and integrity of the personal data being processed. These measures would be detailed within a Data Protection Impact Assessment.
- **Objective 5:** Develop data sharing agreements that outline each organisation's role and responsibility in relation to the data sharing activity and appropriate use of the dataset.

2.2 A workshop was held on 16 January 2020. Attendees for this workshop included colleagues from MHCLG and the Sandbox Senior Case Officer. The draft data model was considered and a number of topics were discussed. These included a discussion around the fairness and proportionality of individual data items in relation to the pilot purposes, the viability of existing data sources, and the availability of legal gateways for the proposed data sharing and subsequent processing. A number of actions from this workshop were agreed to progress the project. A separate meeting was also held to discuss an online data collection system that could be utilised to enable secure data transfers required for the pilot.

2.3 A step-by-step Considerations Document was put together by the ICO Sandbox following on from the pilot being paused in March 2020, due to a re-prioritisation of work in relation to the pandemic. This Considerations Document outlines a number of considerations MHCLG should be addressing prior to collecting or matching any data required for the pilot or other similar data sharing initiatives. This document was based upon the objectives originally outlined in the Sandbox plan and knowledge gained from discussions prior to March 2020.

3. Product description

- 3.1 The Ministry of Housing, Communities and Local Government ('MHCLG') is a ministerial department responsible for government policy in England, for areas including building regulations, communities, emergency planning, housing, planning, the local government sector, race equality and urban regeneration.
- 3.2 MHCLG planned to undertake a pilot to address the low quality of privately rented housing in the Blackpool area. The Blackpool Housing Quality Pilot ('BHQP') presented a multi-agency approach, working with both Blackpool Council and the Department for Work and Pensions ('DWP'), to improve housing standards. The pilot proposed the matching of data held across the three organisations, which would then be used to gain a better understanding of the private rented sector in the area, to form an updated census, and to provide the intelligence needed to drive enforcement action against landlords who fail to maintain adequate standards of rented housing for tenants.
- 3.3 At the time that MHCLG came into the Sandbox, approximately 80% of households within the central wards of Blackpool were receiving some form of benefit from the government. Due to this, landlords could rely on benefit payments as a guaranteed income. This has led to a number of issues including a lack of care or consideration in regards to maintaining sufficient or safe housing for tenants, and running houses in multiple occupation illegally. This has impacted both the safety and well-being of tenants, as well as leading to public money not being spent where it should be.
- 3.4 MHCLG intended to take a lead on data collection and matching, and be responsible for the ongoing operation and governance of the final resulting dataset. Records of value were identified across the three partners. Along with this existing data, it was planned for Council enforcement agents to undertake a wider inspection initiative of privately rented properties in specified wards of Blackpool. This work was required to produce a 'positive list' of properties that meet standards for safe occupation. A high accuracy algorithm would be used to match individual records across the datasets.

- 3.5 Once the dataset had been created, it was expected that data would be shared with the Council to drive a more proactive approach to housing enforcement, and with DWP Job Centre+ staff to recommend safe housing to potential tenants. If the pilot was successful it would then be scaled to other areas in England where similar problems are present.

4. Key data protection considerations

- 4.1 Some, but not all, of the key data protection discussions that took place within the Sandbox engagement (and which are examined further in the Considerations Document) are outlined below.

Roles and responsibilities

- 4.2 The Blackpool housing pilot has been described as a multi-agency approach between the MHCLG, the DWP and Blackpool Council, to combat low housing standards within the privately rented sector. In any such venture it is important to understand what the respective data protection roles and responsibilities are for each organisation involved. These will change depending on whether an organisation is established as a data controller, a data processor or if one or more organisations are joint controllers. These roles should be determined prior to the commencement of any data sharing initiative. The Considerations Document shared with MHCLG outlines the different steps the three organisations should be taking in order to determine their respective roles.
- 4.3 It is clear that all three organisations will be considered controllers in their own right for the data that each currently holds that has been identified as valuable for inclusion in the pilot dataset. However, the pilot may be considered a set of different processing operations, some of which are designed jointly or in part with more than one organisation. To determine the roles and responsibilities, a more granular consideration of the detail of each operation and different points in the data journey may be necessary.

- 4.4 In any instance of differing relationships, the overriding objective will be to uphold the rights of the individuals affected by the processing, to ensure that each organisation is aware of its role to facilitate these rights. Respective responsibilities should be clearly outlined within a data sharing agreement.

Identifying a lawful basis

- 4.5 An organisation must identify a lawful basis prior to processing personal data. There are six available options under the GDPR.
- 4.6 Based on the purposes of the housing pilot in relation to citizen welfare, it may be appropriate for each party to rely upon Article 6(1)(e), 'processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.' All of the organisations involved in the pilot are considered public authorities. Section 8 of the Data Protection Act 2018 states that the public task basis will cover processing necessary for the administration of justice, parliamentary functions, statutory functions and government functions. However, processing based on Article 6(1)(e), must have a basis in UK law to permit lawful use under that basis, and, therefore MHCLG and its partners would need to establish whether they hold the necessary legal powers to allow the proposed processing. This was discussed within the January workshop with MHCLG and it was decided that additional consideration of the current housing laws should be carried out to determine whether an existing legal gateway was available.
- 4.7 The possibility of using the 'public service delivery powers' ("PSD" powers) outlined in Part 5 of the Digital Economy Act (2017) was also considered. The PSD powers provide a mechanism through which legal gateways can be established to enable public authorities to gain access to and share the relevant data required to respond more efficiently to current and emerging social and economic issues. There are a number of conditions that must be met to utilise these powers, however, MHCLG may wish to consider looking at this option where other legal gateways are not currently available to them for the sharing required for the pilot.

- 4.8 The appropriateness of the other lawful bases available under Article 6 was also contemplated within the Considerations Document shared with MHCLG.

Data minimisation, necessity and proportionality of processing

- 4.9 Article 5(1)(c) states that 'Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed.' Also referred to as 'data minimisation', this principle places an obligation on data controllers to ensure that the data they are using is sufficient to fulfil the purpose for the processing, that it has a rational link with that purpose, and that it is not excessive. Compliance with this principle is key to deciding whether the processing is both necessary and proportionate for the intended purposes.
- 4.10 A discussion of the draft data model for the pilot took place at the January workshop. The value of each of the identified data items (in terms of their contribution to the pilot's purposes) was debated and it was decided that some items were unnecessary and were excluded from the model. Where items were deemed to be necessary to the dataset, such as the inclusion of special category data, it was considered whether the use of a 'flag' would be sufficient to further reduce the amount of personal data shared and included, but where it would not undermine the utility of the data. Although this method would reduce the amount of sensitive information that could be gleaned from individual records, it would still be considered as special category data. This is because the indicator by itself still presents a risk that a particular individual or a household could be discriminated against based on this limited information. Where controllers intend to process special category data, they must meet one of the specific conditions in Article 9 of the GDPR, as well as having a lawful basis under Article 6.
- 4.11 The quality of the data in terms of its source was also considered, and secondary sources of the same data were established where data identified at the primary source was potentially not sufficient for the purposes.
- 4.12 Some key steps were shared with MHCLG in the Considerations Document, which should be followed to ensure that the data included in the pilot dataset is compliant with this principle. These key steps are:

- be clear on the reasons for processing, these may be general and more specific;
- identify the minimum data that is needed to fulfil those purposes;
- consider why this data is needed;
- establish that the data is actually sufficient and is of a good quality, from a trusted source;
- consider if it is right to include this data (from a fairness and ethical perspective) and whether its inclusion could have an unjustified detriment upon the individual to whom it relates;
- consider whether the original data can be minimised any further whilst still retaining its value (by using flags, derived values, pseudonymisation techniques); and
- consider restricting access to only those members of staff/organisations that need it to fulfil their defined purposes.

Processing for law enforcement purposes and including criminal offence data

- 4.13 As one of the purposes of the pilot is to drive a more proactive enforcement regime against rogue landlords who fail to maintain adequate standards of housing, it is possible that the processing may involve an element of law enforcement. This is one of the elements of the pilot that was not sufficiently covered in early discussions with MHCLG prior to March 2020. However, this element is discussed within the considerations document in more detail.
- 4.14 One or more parties involved in the pilot may have statutory functions to process data for law enforcement purposes, for example, Blackpool Council may be processing data for the detection and prevention of crime regarding offences committed by rogue landlords. However, the enforcement regime specified within the Blackpool pilot may be in regards to solely civil matters, rather than criminal.

- 4.15 Processing of personal data for law enforcement purposes is covered by Part 3 of the DPA 2018. It is important to identify which part of the DPA 2018 processing falls under, as there are some key differences between Part 2 (General Processing) and Part 3 (Law enforcement processing), including differences regarding individuals' rights, lawful bases for processing, and governance requirements.
- 4.16 In order to process data for law enforcement purposes, an organisation must be considered a 'competent authority' under Schedule 7 of the DPA 2018. The organisation must also have a lawful basis in the context of law enforcement, for example, it is authorised by statutory, common law, royal prerogative or by or under any other rule of law. Local authorities such as Blackpool Council have statutory powers under the Housing and Planning Act (2016) to enforce against landlords for certain criminal matters.
- 4.17 Alternatively, the processing involved in the pilot may not be specifically for law enforcement purposes, but the dataset may include some 'criminal offence data'. This would require consideration of Article 10 of the GDPR, which states that 'processing of data relating to criminal convictions and offences, or related security measures, shall be carried out only under the control of official authority or when the processing is authorised by Union or Member state law'.
- 4.18 The Considerations Document shared with MHCLG, goes into more detail about what the organisations involved in the pilot should consider in relation to the above.

Purpose compatibility and the re-use of personal data

- 4.19 Article 5(1)(b) outlines the 'purpose compatibility' principle. This principle specifies that once purposes for processing are identified, organisations should not swap to another purpose if they decide to use the data for something else. Introducing a new purpose may only be done where either: (i) the new purposes and the original purpose are genuinely compatible, or (ii) where an individual has consented to the new processing, or (iii) where there is a new legal provision allowing it. Processing for scientific or historical research, or for statistical purposes are likely to be considered compatible with the original purpose.

- 4.20 These considerations are particularly relevant to data sharing initiatives such as those proposed by the Blackpool pilot. This is because data will have originally been collected for specified means by each of the organisations involved. The three organisations will therefore be required to examine whether the new purposes are compatible with those for which it was originally collected.
- 4.21 In order to decide whether a new purpose is compatible with the original, a controller may consider the following:
- What are the links between the original purpose and the new purpose?
 - What is the nature of the personal data? Is it special category or criminal offence data sensitive?
 - How was the data originally collected? Under which data protection regime was it original collected?
 - What were individuals told in the privacy information?
 - What is the organisation's relationship with the data subjects who will be affected?
 - Are there any potential new consequences or impacts to data subjects due to the new processing?
- 4.22 One way to support this assessment, is to draw up a data flow diagram to understand how datasets were originally collected and how they will be used going forward. This will support the process of determining compatibility as well as identifying possible risks in the terms of the new data flows. These can then be further considered within a data protection impact assessment.
- 4.23 Additional considerations that MHCLG and its partners should be making in terms of purpose compatibility such as updating existing or developing new privacy information, have been outlined in the Considerations Document.

5. Ending statement

- 5.1 MHCLG's participation in the Sandbox has allowed the ICO to consider in depth how organisations, specifically public authorities carrying out complex data sharing activities, can comply with data protection law.
- 5.2 MHCLG's participation has emphasised to the organisation the importance of establishing initial key dependencies before more technical data analytic work can commence. These key dependencies revolved around clear legal powers/gateways to use data and upfront commitments from partners to permit the use of the essential data that they hold.
- 5.3 Considering each of these compliance requirements will help ensure that MHCLG has sufficient assurance that it has met its obligations under data protection law and any other privacy requirements in relation to the collection and matching of personal data. Although there is no intention currently to recommence the Blackpool housing pilot work, the ICO Sandbox hope that the Considerations Document will be helpful for similar pilots involving data sharing with other organisations. MHCLG may need to carry out additional considerations where the processing differs from the circumstances of the Blackpool pilot.