

Memorandum of Understanding between the Information Commissioner and the Equality and Human Rights Commission

Introduction

1. This Memorandum of Understanding ("**the MoU**") establishes a framework for collaboration, cooperation and information sharing between the Information Commissioner ("**the Commissioner**") and the Equality and Human Rights Commission ("**the EHRC**"), collectively referred to as "**the parties**" throughout this document.
2. This is in order to enhance the effectiveness of our respective functions relating to the emerging use of artificial intelligence and digital technology and ensure that the rights and duties relevant to the Commissioner and EHRC are upheld.
3. In particular, this MoU sets out the broad principles of collaboration and the legal framework governing joint working initiatives, and the sharing of relevant information and intelligence between the parties. The shared aims of this MoU are to enable closer working between the parties, including the exchange of appropriate information, so as to assist them in discharging their regulatory functions.
4. The parties recognise that over the next few years the nature of bilateral, and multilateral cooperation (involving other regulatory agencies), could evolve with the increasing range of digital policy issues where their regulatory remits intersect.
5. This MoU is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or the EHRC. The parties have determined that they do not exchange sufficient quantities of personal data to warrant entering into a separate data sharing agreement, but this will be kept under review.

Scope and overall purpose

6. The purpose of this MoU is to set out the terms of the ongoing collaboration between the parties.
7. This MoU does not override the statutory responsibilities and functions of the parties and is not enforceable in law. However, the

parties are committed to working in ways that are consistent with the principles of this MoU.

8. The parties are committed to fostering effective working relations, principally by promoting a culture of cooperation and collaboration between the two organisations and, when appropriate, meeting to discuss issues of common interest or concern.

Purpose of information sharing, collaboration and cooperation

9. The purpose of the MoU is to enable the parties to work collaboratively in the areas specified above, which enhances their ability to exercise their respective functions.
10. This MoU should not be interpreted as imposing a requirement on either party to disclose information in circumstances where doing so would breach their statutory responsibilities or materially impact operational priorities. In particular, each party must ensure that any disclosure of personal data pursuant to these arrangements fully complies with the United Kingdom's General Data Protection Regulation (the "**UK GDPR**"); the Data Protection Act 2018 (**the "DPA 2018"**), supplementary or amending legislation; section 6 of the Equality Act 2006; and any confidentiality clause under a section 23 Equality Act 2006 agreement. The MoU sets out potential legal bases for information sharing, but it is for each party to determine for themselves that any proposed disclosure is compliant with the law.

Principles of cooperation and information sharing

11. The parties both have statutory powers of investigation and enforcement under their respective legislation. The parties intend to share information with each other, where they consider that such information sharing will help the other to effectively fulfil their respective functions. The parties acknowledge that the sharing of information will always be subject to compliance with applicable law. This may require, amongst other things, that they implement further information sharing arrangements before sharing sensitive personal data, or bulk quantities of personal data.
12. The parties will endeavour to ensure timely and focussed exchange of relevant information that enables effective co-ordination and cooperation in the areas outlined in this MoU.

13. The Commissioner may offer provision of data protection advice to the EHRC, in the context of the EHRC's statutory roles and functions. Similarly, the EHRC may offer provision of general advice relating to any of its functions, in the context of the Commissioner's statutory roles and functions, where these relate to areas of work covered by this MoU.
14. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise), and at his discretion, the Commissioner will alert the EHRC to any potential breaches of the legislation regulated by the EHRC, discovered whilst undertaking regulatory duties, and will provide relevant and necessary supporting information.
15. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, the EHRC will alert the Commissioner to any potential breaches of legislation regulated by the Commissioner, that are discovered by the EHRC whilst undertaking its regulatory duties, and will provide relevant and necessary supporting information.
16. The parties will comply with the laws they are subject to, including, but not limited to, local data protection laws, equality laws, and human rights laws. They will also maintain appropriate policies, procedures; and other internal governance requirements in order to support their compliance with applicable legal obligations.
17. The parties will exchange information on relevant issues of mutual interest, subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise), and as appropriate and relevant to their respective objectives. In doing so, the parties will work transparently and collaboratively, using their reasonable efforts to alert each other to issues which they anticipate may have significant implications for the work of the other party.

Legal basis for sharing information

Information shared by the EHRC with the Commissioner

18. The Commissioner's statutory functions relate to the legislation set out at paragraph 38, and this MoU governs information shared by the EHRC to assist the Commissioner in meeting those

responsibilities. The EHRC must ensure, amongst other things, that its processing of personal data is compliant with the “data protection principles” and any other relevant requirements contained in the UK GDPR or DPA 2018; any restrictions imposed by section 6 of the Equality Act 2006 and any other applicable legislation.

Information shared by the Commissioner with the EHRC

19. The Commissioner, during the course of his activities, will receive information, including personal data, from a range of sources. He will process all personal data in accordance with the UK GDPR, the DPA 2018 and all other applicable legislation. The Commissioner may identify that information he holds, which may include personal data, ought to be shared with the EHRC as it would assist them in performing their functions and responsibilities, in particular in areas of work generated by this MoU between the parties.
20. Section 132(1) DPA 2018 restricts the disclosure of information that (i) has been obtained by, or provided to, the Commissioner in the course of, or the purposes of, discharging his functions, (ii) relates to an identifiable individual or business, and (iii) is not otherwise available to the public from other sources. Such information may include, but is not limited to, personal data and may only be disclosed if the disclosure is made with lawful authority. Section 132(2) DPA 2018 provides that a disclosure of information falling within the scope of section 132(1) will be made with lawful authority in a number of circumstances, in particular where the disclosure is:
 - Necessary for the purpose of the Commissioner discharging his functions (section 132(2)(c));
 - Made for the purposes of criminal or civil proceedings, however arising (section 132(2)(e)); or
 - Necessary in the public interest, having regard to the rights, freedoms and legitimate interests of any person (section 132(2)(f)).
21. The Commissioner will therefore be permitted to share information with the EHRC in circumstances where it has determined that it is reasonably necessary to do so in furtherance of one of the grounds set out under section 132(2) of the DPA 2018, and may do so

where it will assist in the work referred to in this MOU. In doing so, the Commissioner will identify the function of the EHRC with which that information may assist, and assess whether that function could reasonably be achieved without access to the particular information in question. In particular, where the information proposed for sharing with the EHRC amounts to personal data the Commissioner will consider whether it is necessary to provide it in an identifiable form in order for the EHRC to perform its functions, or whether disclosing it in an anonymised form would suffice.

22. If information to be disclosed by the Commissioner was received by him in the course of discharging his functions as a designated enforcer under the Enterprise Act 2002, any disclosure will be made in accordance with the restrictions set out in Part 9 of that Act.
23. Where information is to be disclosed by either party for law enforcement purposes under section 35 (4) or (5) of the DPA 2018 then they will only do so in accordance with an appropriate policy document as outlined by section 42 of the DPA 2018.
24. Where a request for information is received by either party under data protection laws or the Freedom of Information Act 2000 ("the **FOIA**"), the recipient of the request will seek the views of the other party as described in the FOIA section 45 Code of Practice, where the information being sought under the request includes information obtained from, or shared by, the other party. However, the decision to disclose or withhold the information (and therefore any liability arising out of that decision) remains with the party in receipt of the request.

Method of exchange

25. Appropriate security measures will be agreed to protect information shared between the parties in accordance with the sensitivity of the information and any classification that is applied by the sender.

Confidentiality and data breach reporting

26. Where information that is subject to a duty of confidentiality is shared between the parties it will be marked with the appropriate security classification.
27. Where one party has received information from the other, it will, subject to applicable law, consult with the other party before

passing the information to a third party or using the information in an enforcement proceeding or court case.

28. Where information held by one party (the originating party) that is subject to a duty of confidentiality has been provided to or shared with the other party (the receiving party), if the receiving party wrongfully discloses such information to a third party, the receiving party will bring the wrongful disclosure to the attention of the originating party without delay. This is in addition to any obligation to report a personal data breach under the UK GDPR and/or DPA 2018 where personal data is contained in the information disclosed.

Duration and review of the MoU

29. The parties will monitor the operation of this MoU and will review it every two years.
30. Any minor changes to this memorandum identified between reviews may be agreed in writing between the parties.
31. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation.

The role and function of the Information Commissioner

32. The Commissioner is a corporation sole appointed by His Majesty the King under the Data Protection Act 2018 to act as the UK's independent regulator to uphold information rights in the public interest, promote openness by public bodies and data privacy for individuals.
33. The Commissioner is empowered to take a range of regulatory action for breaches of the following legislation:
- DPA 2018;
 - UK GDPR;
 - Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR);
 - FOIA;
 - Environmental Information Regulations 2004 (EIR);
 - Environmental Protection Public Sector Information Regulations 2009 (INSPIRE Regulations);
 - Investigatory Powers Act 2016;

- Re-use of Public Sector Information Regulations 2015;
 - Enterprise Act 2002;
 - Security of Network and Information Systems Directive (NIS Directive); and
 - Electronic Identification, Authentication and Trust Services Regulation (the “**eIDAS**”).
34. Article 57 of the UK GDPR and Section 115(2)(a) of the DPA 2018 place a broad range of statutory duties on the Commissioner, including monitoring and enforcement of the UK GDPR, promotion of good practice and adherence to the data protection obligations by those who process personal data. These duties sit alongside those relating to the other enforcement regimes outlined in paragraph 34 above.
35. The Commissioner’s regulatory and enforcement powers include:
- conducting assessments of compliance with the DPA, UK GDPR, PECR, eIDAS, the UK NIS Regulations, FOIA and EIR;
 - issuing information notices requiring individuals, controllers or processors to provide information in relation to an investigation;
 - issuing enforcement notices, warnings, reprimands, practice recommendations and other orders requiring specific actions by an individual or organisation to resolve breaches (including potential breaches) of data protection legislation and other information rights obligations;
 - administering fines by way of penalty notices in the circumstances set out in section 155 of the DPA;
 - administering fixed penalties for failing to meet specific obligations (such as failing to pay the relevant fee to the Commissioner);
 - issuing decision notices detailing the outcome of an investigation under FOIA or EIR;
 - certifying contempt of court should an authority fail to comply with an information notice, decision notice or enforcement notice under FOIA or EIR; and
 - prosecuting criminal offences before the Courts.

36. Regulation 31 of PECR, as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, also provides the Commissioner with the power to serve enforcement notices and issue monetary penalty notices as above to organisations who breach PECR. This includes, but is not limited to, breaches in the form of unsolicited marketing which falls within the ambit of PECR, including automated telephone calls made without consent, live telephone calls which have not been screened against the Telephone Preference Service, and unsolicited electronic messages (Regulations 19, 21 and 22 of PECR respectively).

Role, functions and powers of the EHRC

37. The Equality and Human Rights Commission is the statutory and regulatory body responsible for enforcing the Equality Act 2010 and for promoting awareness, understanding and protection of human rights. It is also accredited by the United Nations as an “A status” national human rights institution. Its powers and duties (derived from the Equality Act 2006) include reducing inequality, eliminating discrimination and promoting and protecting human rights.
38. The focus of the EHRC’s regulatory role is to help organisations achieve what they should, not catch them out if they fall short. A range of powers enable it to do this. These include providing advice and guidance, publishing information and undertaking research.
39. When these methods are ineffective, the EHRC also has a range of enforcement powers. These powers are set out in the Equality Act 2006 and play an essential role in helping it make a difference.
40. There are a number of different approaches it can take, depending on the particular circumstances it is trying to change. They range from guidance and legal assistance, interventions and funding, to investigations and court action.
41. The EHRC does not get involved in every issue or dispute, however. It uses its legal or enforcement powers when it is the best way to achieve change, as specified in our litigation and enforcement policy, such as:
- to clarify the law, so people and organisations have a clearer understanding of their rights and duties
 - to highlight priority issues and force these back to the top of the agenda

- to challenge policies or practices that cause significant disadvantage, sometimes across a whole industry or sector

To do this, the EHRC takes forward actions, with the potential that the courts and tribunals will secure binding, positive judgments that reinforce, strengthen or expand people's rights.

42. By using its powers in this way, EHRC legal actions secure widespread and lasting benefits, positively influencing the everyday experiences of millions of individuals.

Key contacts

43. The parties have both identified a key person who is responsible for managing this MoU:

Information Commissioner's Office	Equality and Human Rights Commission
Stephen Almond, Director of Technology and Innovation 	Adam Sowerbutts, Director of Litigation and Enforcement 

44. Those individuals will maintain an open dialogue between each other in order to ensure that the MoU remains effective and fit for purpose. They will also seek to identify any difficulties in the working relationship, and proactively seek to minimise the same.

Signatories

Stephen Almond, Director of Technology and Innovation, Information Commissioner's Office	Adam Sowerbutts, Director of Litigation and Enforcement, Equality and Human Rights Commission
	
Date: 14th February 2023	Date: 1st February 2023

Note: This document has been signed and signatures redacted for publication.

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