**medConfidential submission to the UN Special Rapporteur on Extreme Poverty**

We limit ourselves to part D of the call for evidence.[[1]](#footnote-1) While our remit touches other areas, we here only cover issues not raised in context in submissions by others.

**About medConfidential**

medConfidential is an independent non-partisan organisation campaigning for confidentiality and consent in health and social care, which seeks to ensure that every flow of data into, across and out of the NHS and care system is *consensual, safe, and transparent*.

We also engage with data use across Government, as to the first approximation, the first data that institutions of state wish make copies of is medical data.

Those who use certain aspects of the welfare system, and by definition the disability system, are more likely to use the health system as well. As such, there is eternal pressure on data sharing between the two, which will be exacerbated by the move to ‘local health and care records’.

In our experience, under institutional pressures, bureaucratic processes, such as DWP, all assume a claimant must be prevented from lying, so one half of DWP wants to access NHS records as it assumes they are accurate. However, when the NHS does provide references for conditions,[[2]](#footnote-2) the other half of DWP entirely ignores them (see the ‘work capability assessments’ failures). More data does not solve any problems, but it does allow one department to absolve itself of blame for the harms of its decisions, in the same way that no tyrant ever failed to justify their crimes.

**Part D - New technologies in the welfare system**

Those at risk of poverty are most likely to need most assistance with digital services - what the digital divide charity [dotEveryone](https://doteveryone.org.uk/about/) describes as “helping the furthest first”.[[3]](#footnote-3)

Universal Credit was the first large HMG citizen facing complex service to be ‘digitally transformed’. Starting with a new service was supposedly easier.

Many of the rough edges of UC were supposed to be smoothed out by ‘assisted digital’. A senior visionary behind the intent of the ‘digital’ and ‘assisted digital’ approach recently explained the flaws in that strategy.[[4]](#footnote-4) You may wish to meet with Tom and others from public.digital while you are here - it would be very much worth your time, and they also work on digital issues in countries where the Special Rapporteur is more normally focussed.

An assumption that the system always works - a natural assumption of people designing systems - has consequences when any part goes wrong,[[5]](#footnote-5) and in some cases, people walk the streets hungry. One of the multiple causes of that footnoted incident are being addressed,[[6]](#footnote-6) other failures were the ‘human error’ that the system designers assumed would never happen. In that case, had the Job Centre followed the correct process, they would have been given an alternate route to claim; they didn’t, the claimant wasn’t, and the consequences were significant.

Failures happen, and overly optimistic systems designers never considered what would happen. In those cases, human rights and legal rights may be adversely impacted.

The human rights principles underpinning a system do not apply any less because part of the decision was wholly or partially automated. In the analogous field of ‘health and safety (at work)’, the Government has been extremely clear on this.[[7]](#footnote-7)

The different type of opacity of automated decision making to human decision making systems requires different solutions. Those solutions come from transparency and accountability that a process is shown to do what it says it should do.

In the current style, one of the early attempts at using data driven discovery was in Sunderland with Palantir.[[8]](#footnote-8) That contract began around 2014 and in 2018 is costing £500,000 a year.[[9]](#footnote-9) They will (hopefully) have evidence that can inform the work of the Rapporteur, being further into the process than most.

**Every basis for automated decision making is data**

An algorithm can only make a decision based on the data provided to it.

The Special Rapporteur will have extensive experience of how data fails to match reality. Whether that is through neglect, corruption, or one part of the system being simply unaware of the uses to which some data will be put, and therefore being less diligent than may be required by the consequences.

In digital services, data gets copied, and an assumption is made that data collected by someone else within the organisation is more accurate. Discovering those systemic flaws is something which requires an institutional and systemic delivery of accountability.

**Accountability**

In principle, the UK believes in the rule of law, in transparency of public bodies, and in accountability to citizens. The principle of transparency on data by public bodies is within the Data Protection Act, it is within the Codes of Practice for the Digital Economy Act, and it is within the Government’s Technology Code of Practice (point 10). In some ways, the law says that it should happen, and Codes of Practice say it should happen, but it is less than fully clear whether it actually delivers those benefits to those who need it most, those who are most in need of support from public services and at risk of predation by those who may not have an individual’s best interests at heart.

We understand that when the UC system was being developed, there was a claimant visible log of which officials had accessed the record when, and what their purpose was. This allowed a claimant to see where in the process their claim is, and whether the official processing steps that should be happening actually are. Having evidence that a ‘decision maker’ did not look at a record - because if they did there would be an entry in the log, and there isn’t - before making a decision is necessary to challenge it. Senior DWP officials required that feature be removed before launch.

In a digital service, confidence that law and processes are being followed, and human rights respected, should be grounded in evidence. There is no reason UC should not provide this information to claimants, other than their knowledge that the process fails.

Fraud projects are obviously a special case - it is unwise to tell potential fraudsters only that unusual fraud checks are being carried out. In its place, every citizen should be able to see the whole range of fraud detection projects. HMG has a long tradition of announcing projects with great fanfare, handing a bunch of data to credit reference agencies to do some work, but nothing ever happening as a result. The effectiveness of any particular anti-fraud measure is rarely disclosed, simply the assertion that more checks are perpetually needed.

In terms of preventing abuse, laws are also in place to avoid ‘compelled subject access requests’[[10]](#footnote-10) where a third party compels a data subject to made a subject access request to a data controller in order for the third party to receive information that they would not otherwise be able to access - it was previously abused in relation to criminal records checks or insurance access to health records which subverted standard processes.[[11]](#footnote-11)

While a digital audit trail may not immediately help the digitally excluded, it does help those who have experienced advocates on their behalf - and it also requires all actors within the system to be aware that if they breach the rules for someone they think doesn’t matter, at some point they will get unlucky.

We go into more detail on this in the draft note attached for a current Parliament inquiry on Digital Government. Dr Jennifer Cobbe of the University of Cambridge has also been working through existing obligations of algorithmic decision making as compliant with the rule of law.[[12]](#footnote-12)

**Looking forward**

There will be a new UK legal ‘framework’ shortly - although it is not a Code of Practice with standards and norms around it. The 2018 Data Protection Act contained a requirement for the Government (not the Information Commissioner) to produce a ‘Framework for Data Processing by Government’,[[13]](#footnote-13) an otherwise entirely opaque document, as yet unpublished and unseen, which will cover future data processing programmes. These will affect most the heaviest users of Government services. The Special Rapporteur may wish to point out that the issues they discover in UC may repeat, to varying degrees, within other programmes under the Framework for Data Processing by Government, unless the systemic causes of issues he may raise are addressed.

Given the framework is as yet unconsulted on, this should not be a controversial view, and can be done entirely from findings within the Special Rapporteur’s remit, as doing the same thing over and over again usually gets the same result.

Every citizen, whether in poverty or excess, should be able to see how data about them is used. It is the only way to know how differently they may be treated by the public bodies.

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1. <https://www.ohchr.org/EN/Issues/Poverty/Pages/CallforinputUK.aspx> [↑](#footnote-ref-1)
2. As one example, [https://www.independent.co.uk/voices/dwp-benefits-disability-patients-nhs-gp- brain-tumour- parkinsons-assessment-a8332756.html](https://www.independent.co.uk/voices/dwp-benefits-disability-patients-nhs-gp-brain-tumour-parkinsons-assessment-a8332756.html) but many other evidence submission to the Rapporteur cover this in more detail than is within our remit. [↑](#footnote-ref-2)
3. <https://www.huffingtonpost.co.uk/rachel-coldicutt/tech-for-good-putting-people-first_b_10046690.html> [↑](#footnote-ref-3)
4. <https://public.digital/2018/09/21/i-should-have-renamed-assisted-digital/> [↑](#footnote-ref-4)
5. <https://www.bbc.co.uk/news/uk-wales-44565680> [↑](#footnote-ref-5)
6. Final sentence: [https://www.parliament.uk/business/publications/written-questions-answers- statements/written-question/Lords/2018-07-19/HL9693/](https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-07-19/HL9693/) [↑](#footnote-ref-6)
7. [https://www.parliament.uk/business/publications/written-questions-answers-statements/written- question/Lords/2018-05-23/HL8200/](https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2018-05-23/HL8200/) [↑](#footnote-ref-7)
8. [https://www.computerworlduk.com/data/sunderland-council-builds-big-data-intelligence-hub-with- palantir-3572330/](https://www.computerworlduk.com/data/sunderland-council-builds-big-data-intelligence-hub-with-palantir-3572330/) [↑](#footnote-ref-8)
9. <https://www.sunderland.gov.uk/article/13261/Payments-over-500> [↑](#footnote-ref-9)
10. <https://ico.org.uk/media/for-organisations/documents/1042608/enforced-subject-access-s56.pdf> [↑](#footnote-ref-10)
11. [https://www.lmc.org.uk/visageimages/guidance/focus\_on\_guidance/2015/FocusonSARsinsurance August2015FINAL.pdf](https://www.lmc.org.uk/visageimages/guidance/focus_on_guidance/2015/FocusonSARsinsuranceAugust2015FINAL.pdf) [↑](#footnote-ref-11)
12. Formerly at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3226913> and may reappear [↑](#footnote-ref-12)
13. [http://www.legislation.gov.uk/ukpga/2018/12/part/7/crossheading/framework-for-data-processing-by- government/enacted](http://www.legislation.gov.uk/ukpga/2018/12/part/7/crossheading/framework-for-data-processing-by-government/enacted) [↑](#footnote-ref-13)