DAC BEACHCROFT

The approach to the regulation of AI in the UK

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Overview

The UK currently lacks overarching legislation or regulations specifically tailored for artificial intelligence (AI). The previous Conservative government adopted a pro-innovation, principles-based approach to AI regulation. Rather than establishing a single, central AI regulator, the current framework relies on existing regulators, leveraging their expertise to oversee AI within their respective sectors.

However, this position has been expected to change since the election of a Labour government in the 2024 general election. Early indications suggested an imminent change in approach, with reference to AI legislation in the Kings Speech, yet discussions around an AI Bill are continuing. In the meantime, we continue to see AI being the subject of Private Member Bills and with the issue also forming part of the consideration around the Data (Use and Access) Bill.

To navigate the evolving landscape of AI regulation, it is important to acknowledge that this is a fast-moving area of the law and may be subject to frequent change in the near future. This memo reflects the accurate information available as of 6 March 2025, and we encourage ongoing awareness and adaptability to new developments in AI policy and regulation.

For further detail on the UK's approach to AI, the House of Commons research briefing "Artificial intelligence: a reading list"[1] is a useful source of information.

Direction of travel

The Labour Government has yet to articulate a clear direction regarding its approach to AI regulation. There have been some indications, through the King's Speech and by Peter Kyle, the Secretary of State for Science, Innovation and Technology (covered in more detail below) that AI will be regulated within the next year.

However, the details provided thus far fall short of expectations.

Although the Government's commitment to some form of AI regulation is evident, many have been surprised by this lack of clarity, intention and detail; perhaps intended to leave the Government with more time to fully develop its approach to policy in a complex and rapidly developing area. It is expected that the Government will publish more detailed proposals regarding potential AI regulation in the coming months; albeit the pace at which any proposals will proceed remains to be seen.

Labour manifesto

Referring back to the Labour Manifesto[2], this document indicated an intention to implement specific regulation for AI in the UK. This represented a departure from the previous Conservative Government that championed a 'pro-innovation' approach.

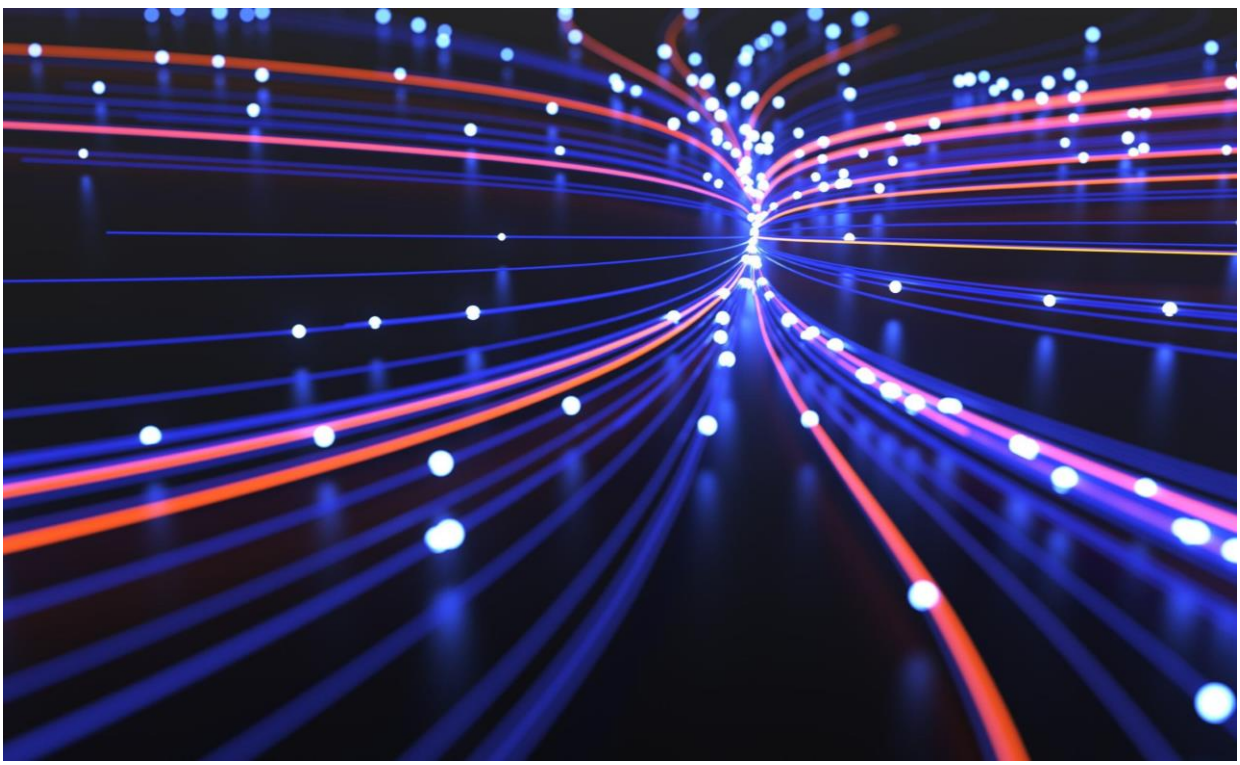
When in power, the Manifesto pledged to "ensure the safe development and use of AI models by introducing binding regulation on the handful of companies developing the most powerful AI models". Although a vague undertaking, it provided some indication that the intended legislation will only target specific large companies.

The Labour Manifesto outlined other proposed initiatives related to AI such as:

- the establishment of the Regulatory Innovation Office to assist existing regulators in updating regulations in relation to AI;
- removing planning barriers for new data centres by designating them as Nationally Significant Infrastructure Projects;
- creating the National Data Library which is aimed to consolidate existing research programmes and to help deliver data-driven public services; and
- committing to long-term funding for research and development.

These proposals acknowledge the transformative potential of AI for the society and equally, concerns about the risks and detrimental impact that it could also bring

Overall, the plans looked to be consistent with efforts to find a balance between a 'pro-innovation approach' whilst protecting the rights and safety of British citizens.



The King's Speech

In the King's Speech delivered in July 2024, the Government outlined its plans for the upcoming parliamentary term, addressing various policy areas.

Among these topics, 'Artificial intelligence' is referenced only twice in 104 pages of background briefing notes. The section relating to AI regulation lacked detailed proposals, but did indicate a commitment to further explore and develop frameworks for managing AI as part of the broader regulatory agenda with comments focusing on the Government's intention "to establish the appropriate legislation to place requirements on those working to develop the most powerful artificial intelligence models"[3].

Despite the lack of granularity, this suggested an overall approach to specifically regulate the 'most powerful' AI models and to place requirements on developers, instead of users.

As noted previously, this would mark a clear departure from the approach of the previous government which showed little inclination to introduce AI regulation, at least in the short term.

By explicitly addressing this in the King's Speech, albeit in vague terms, the current government set a different tone in comparison to its predecessor.

An AI Bill?

It was anticipated that a consultation on a proposed bill concerning AI regulation would occur in in the later part of 2024, with legislation to be to be introduced in 2025.

However, to date, no such consultation has taken place, leaving the timeline for discussions and potential legislative developments uncertain.

The House of Lords Communications and Digital Committee report[4] on large language models and generative AI, collected a number of comments from government on this piece of legislation.

At the Financial Times Future of AI Summit in November 2024, Peter Kyle, the Secretary of State for Science, Innovation and Technology stated legislation to safeguard against the risks of AI would be introduced in the next year.

However, mirroring the intention set out in the King's Speech in July 2024, the Secretary of State has stated that the legislation will likely focus exclusively on "ChatGPT-style 'frontier' models: the most advanced systems". This would represent a focused piece of legislation focused on higher-risk AI models deemed to pose a greater risk to British citizens.

As part of this process, the Government again has set a different tone from the previous government, expressing an intention to collaborate with other jurisdictions such as the EU and the US. However, it is worth noting that it appears the Government does not intend to follow in the footsteps of the EU in passing prescriptive regulations surrounding AI.

The UK's approach can be characterised as trying to steer a middle course between the EU's comprehensive AI Act and Washington's approach, now directed by the Trump administration's recent executive order to remove barriers to American leadership in AI, but so far yielding no federal legislation.

On 13 January 2025, the UK government published its AI Opportunities Action Plan[5] outlining a strategic roadmap to position the UK as a global leader in AI. It included 50 recommendations aimed at accelerating AI adoption across various sectors, fostering economic growth, and enhancing public services. We recently published an article covering the Action Plan in more detail here[6].

Referring back to the proposed AI Bill, the Action Plan did refer to DSIT consulting on legislation in Spring 2025 "to provide regulatory certainty… [for] the critical risks associated with the next generation of the most powerful AI models." However, recent reports have indicated that plans for legislation may be further delayed to allow for alignment by the UK with the US.

Large language models and generative AI: House of Lords Communications and Digital Committee report

On 21 November 2024, the House of Lords debated[7] the House of Lords Communications and Digital Committee report 'Large language models and generative AI', which was published in February 2024[8]. The previous Conservative Government responded to the report in May 2024.

The purpose of the inquiry was to "examine likely trajectories for Large Language Models (LLMs) over the next three years and the actions required to ensure the UK can respond to opportunities and risks in time". The Committee in this report set out 61 recommendations and directed particular attention to several key recommendations namely:

- Making market competition an explicit AI policy objective;
- Avoid narrowly focussing on risks and safety and support innovation and development. In essence, avoid regulatory capture but regulate proportionately;
- Introduce protections concerning discrimination, bias and data protection; and
- Develop accredited standards and common auditing methods, with a view of establishing proportionate regulation.

The outcome from the debate indicated a general consensus leaning towards proactive and collaborative governance to ensure ethical, safe and equitable AI deployment.

The debate made clear that that LLMs and AI can, and will, be hugely positive contributors to our lives and economy. However, there is still a need to balance the desire to grow the economy by harnessing the potential of AI with the risks of harming humanity. In essence, regulate proportionately.

Private Members' Bills

Two Private Members' Bills have been introduced in the House of Lords to make provision for the regulation of artificial intelligence. Firstly, the **Public Authority Algorithmic and Automated Decision-Making Systems Bill**[9] ("the PAA Bill"), introduced in September 2024, aims to regulate the usage of algorithmic and automated decision-making systems across the public sector. It seeks to make the use of such systems more transparency, fair and to mitigate against the risks arising from such technologies, including bias and discrimination. The PAA Bill would require public authorities to complete an 'Algorithmic Impact Assessment' prior to the deployment of an algorithmic or automated decision-making system. Such an impact assessment, as required by the Bill, must include:

- a detailed description of the algorithmic or automated decision-making system;
- an assessment of the relative benefits and risks of the system including the risks to the privacy and security of personal information, risks to the safety of a service user or group of service users, and risks and likely impacts on employee of public authorities;
- an explanation of the steps taken to minimise those risks;
- independent external scrutiny of the efficacy and accuracy of the system; and

More detail can be found in the House of Lords library briefing on the Bill[10].

In addition, the **Artificial Intelligence (Regulation) Bill** ("the AI Regulation Bill") was introduced into Parliament on 4 March 2025. This Private Members' Bill was put forward during the previous Parliamentary session but was not concluded due to the 2024 general election.

Per the parliamentary briefing notes from the previous version of this proposal, the AI Regulation Bill would establish a new body, the AI Authority, which would have various functions help address artificial intelligence (AI) regulation in the UK.

This would include a requirement for the AI Authority to ensure relevant existing regulators were taking account of AI; to ensure alignment in approach between these regulators; and to undertake a gap analysis of regulatory responsibilities with respect to AI. The AI authority would also have various other functions including monitoring economic risks arising from AI, conducting horizon-scanning of developing technologies, facilitating sandbox initiatives to allow the testing of new AI models, and accrediting AI auditors. In addition, the bill would introduce a set of regulatory principles governing the development and usage of AI.

It should be noted that, Private Members' Bills are introduced by individual MPs or members of the Lords rather than by the Government. Very few Private Members' Bills become law but, by creating publicity around an issue, they may affect legislation indirectly. Therefore, it is important to fully consider the proposals set out in these Bills to understand issues of concern around AI.

As noted, the introduction of these Bills is reflective of certain concerns around the use of AI systems and the way in which they can be used in the public sector. Although they are unlikely to be passed, it will create further discussion on the introduction of government legislation in the space.

Data (Use and Access) Bill

On 23 October 2024, the UK Government published the highly anticipated Data (Use and Access) Bill (DUA Bill)[11], which had been expected following its announcement in the King's Speech. The DUA Bill is relevant to the regulation of AI, in particular the question of automated decision-making.

The DUA Bill incorporates certain aspects of its predecessor, the Data Protection and Digital Information Bill (DPDI Bill), such as the approach effectively relaxing the circumstances in which automated decision-making can be used.

The DUA Bill would replace Article 22 of the UK GDPR (with Articles 22A to 22D) to allow that automated decision-making would no longer not restricted to the three current prescribed circumstances.

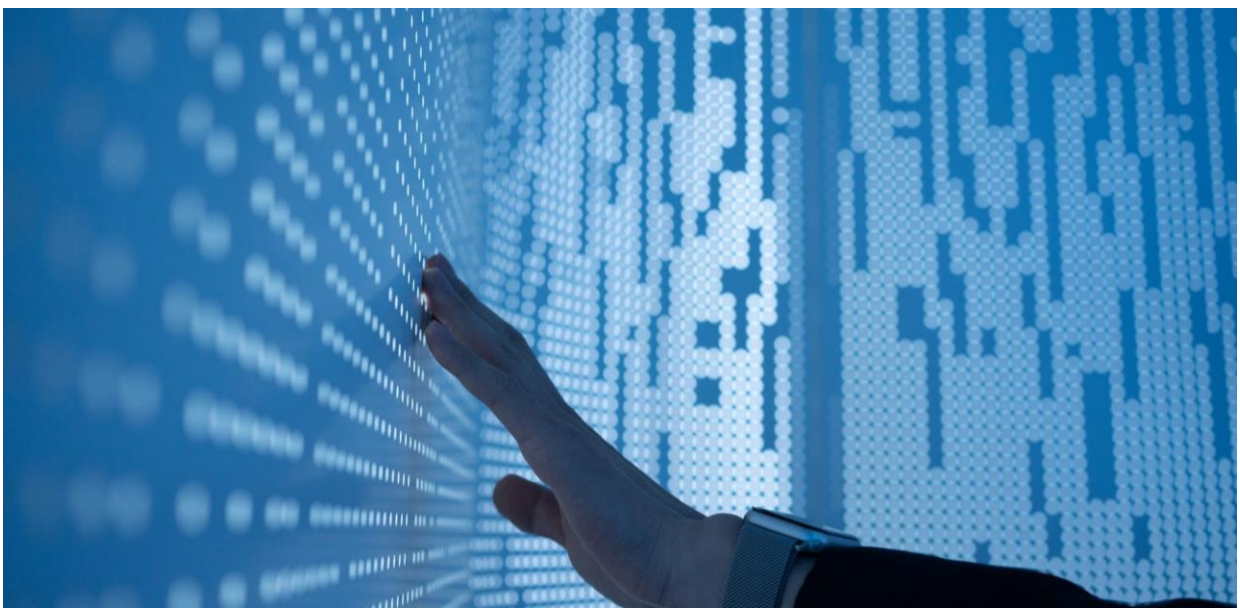
The DUA Bill will permit the use of automated decision-making in lower-risk situations whilst still ensuring any significant decision-making regarding special category personal data remains subject to human oversight. This will ensure particular safeguards to protect data subjects' rights and interests.

Specifically, where a decision has been made via automated decision-making method, the data subject would have to be:

1. provided with information about decisions taken about them;
2. enabled to make representations about such decisions;
3. enabled to obtain human intervention in relation to such decisions; and
4. enabled to contest such decisions.

The previous DPDI Bill would have permitted the Secretary of State to use its power to vary the safeguards listed above. However, following concerns raised at the time that this power could have been used to make changes which in some way would limit the scope of a particular safeguard, the DUA Bill limits this power. The DUA Bill would grant the Secretary of State the same power but only to 'add' to the provisions, so as to only provide clarity or add additional safeguards.

The DUA Bill has passed the House of Lords and is currently being debated in the House of Commons. A Public Bill Committee is scrutinising the Bill line by line and is expected to report by 18 March 2025. Consequently, for the purposes of AI regulation, any further developments should be closely followed to assess whether the DUA Bill passes through the legislative process as currently drafted[12].



Where have we come from: A "Pro-Innovation Approach"

As noted previously, the previous Conservative government set out its proposed approach for regulating AI within a White Paper[13] titled: "A pro-innovation approach to AI regulation" published on 29th March 2023. The White Paper formally introduced the idea of a principles-based and "context specific" approach to AI regulation in the UK.

As of February 2025, given that there is a shift in approach by the change in government since publication, it is likely that this White Paper will be superseded by new policies that align with the current government's commitment to addressing AI regulation more comprehensively.

Previously, the following five principles from the White Paper set out the parameters which the UK Government will expect regulators to enforce in their sector:

1. Safety, security and robustness
AI must primarily be safe. AI Suppliers must have appropriate measures in place to ensure their AI systems are secure and robust and that risks are identified and managed accordingly.

2. Appropriate transparency and "explainability"
The person or entity needs to be aware that AI is being used and to have access to (and understand) the decision-making processes of an AI system.

3. Fairness
AI systems must not undermine the rights of individuals or organisations, including not discriminate unfairly or create unfair market outcomes.

4. Accountability and governance
AI systems must be governed in a way that ensures effective oversight and clear accountability.

5. Contestability and redress
Users of AI need to be able to contest an AI decision which is harmful or creates a material risk

These five principles were not intended to be statutory. Existing regulators were instead empowered to issue guidance regarding interpretation of the five principles and what practical measures can be taken in order to ensure compliance. The previous government's reasoning for taking this approach, rather than introducing AI-specific legislation, is that it would:

- create a regulatory framework which is adaptable in the face of rapidly evolving technology; and
- avoid a scenario whereby the remit of existing regulators is undermined by new legislation.

Therefore, rather than looking to precisely define an AI system, as under the EU AI Act, the White Paper approach instead defines AI systems by reference to two key characteristics: adaptivity and autonomy.

In essence, the previous government acknowledged that AI systems are constantly evolving and are becoming increasingly complexed. As such and in order to not have regulation lag behind the pace development of AI systems, the White Paper focussed on outputs of the system rather than the operation of the systems themselves.

What have regulators done so far?

As we take a look at the efforts made by regulators to date, it is important to acknowledge that while much of the regulatory action taken thus far has largely stemmed from responses to the previous government's White Paper, it remains relevant in the current context. As the Government introduces its own approach to AI regulation, the existing framework and initiatives may continue to inform developments, even as the earlier White Paper is likely to be superseded by new policies.

The key regulators that will be involved in the governance of AI includes the following:

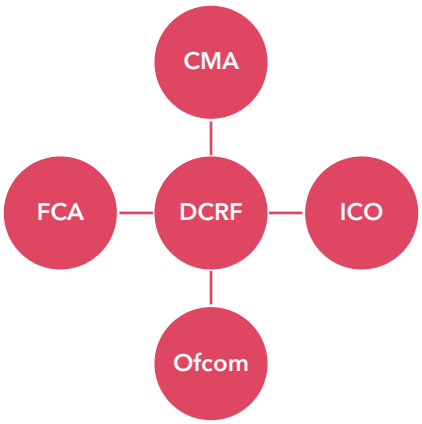
1. the Information Commissioner's Office (ICO)[14];
2. the Financial Conduct Authority (FCA)[15];
3. the Prudential Regulation Authority (PRA) and Bank of England (BoE)[16];
4. the Medicines and Healthcare products Regulatory Agency (MHRA)[17];
5. the Competition and Markets Authority (CMA)[18]; and
6. the Office of Communications (Ofcom)[19].

It is generally acknowledged that the regulators are expected to cooperate with each other and ensure that approaches taken and guidance issued are aligned with one another. This allows AI systems to operate across multiple regulatory remits in circumstances where an AI system is sector agnostic. The risk of course being the issuance of competing (and potentially contradictory) guidance and the dilemma of which takes precedence.

A key proposal put forward by the Department for Science, Innovation and Technology (DSIT), in order to ensure a coordinated approach to AI governance, is a new multi-regulator AI sandbox which will "allow innovators and entrepreneurs to experiment with new products or services under enhanced regulatory supervision without the risk of fines or liability". The DSIT Interim Report highlighted the importance of regulatory capacity and coordination.

Digital Regulation Cooperation Forum

The work of the Digital Regulation Corporation Forum (DRCF)[20] was seen as an example of best practice. The DRCF is a voluntary forum established in 2020 which brings together four UK regulators with responsibilities for digital regulation – the CMA, FCA, ICO and Ofcom.



These regulators recognised that, by working together, they could better respond to the global nature of large digital platforms and the speed at which they innovate. There is a suggestion that an expanded version of the DRCF should be considered to co-ordinate approaches between all regulators. However, the DRCF has recently indicated that there are no immediate plans to expand their membership.

The group engages on overlapping policy areas to deliver a coherent and coordinated approach to digital regulation for both consumers and business. The DRCF works with a wide range of stakeholders including industry, trade associations and technology companies. Regular engagement is undertaken with UK Government stakeholders including those in the devolved nations and a wider group of regulators outside of the members of the DRCF.

The DRCF issued their 2024/25 Workplan[21] which sets out the priorities for the DRCF and establishes a three-year vision reflecting the shared priorities of the members. There are 12 Workplan projects identified which focus on key AI issues:

1. **DRCF AI and Digital Hub:** This 12-month pilot will provide regulatory clarity to AI and digital innovators across multiple regulatory remits, by making it easier to deliver digital products to market. The DRCF will publish outcomes of queries as case studies on the website and seek feedback from users to evaluate the performance and service offering of the pilot.
2. **Artificial Intelligence:** The group will work together on a range of activities to improve regulatory coherence and business compliance in line with the UK Government's AI framework. These activities are expected to include joint research into consumer experience of generative AI and the third-party auditing market; hosting events to explore the interaction of the UK Government's AI principles with regulation and raise awareness of research into responsible AI; sharing knowledge with users and the UK Government's central AI function.
3. **Online Safety and Data Protection (Ofcom/ICO):** The regulators will continue to ensure coherence between data protection and online safety. The development of existing working practices within the legal framework, along with cooperation and collaboration on issues such as Ofcom's codes of practice and guidance under the Online Safety Act and ICO guidance on user profiling and behaviour identification safety will be carried out.
4. **Digital Assets (FCA/ICO):** To allow continued collaboration to deepen the understanding of digital assets, the regulators will engage with the crypto asset industry and other stakeholders and also look to align ICO guidance and FCA work in this area.
5. **Illegal Online Financial Promotions (FCA/Ofcom):** The regulators will continue to engage and explore the interaction and coherence between Ofcom's Online Safety Act codes of practice and Financial Promotions legislation. The interventions of other regulators such as the ICO may also be considered to support data sharing.
6. **Promoting Competition and Data Protection (ICO/CMA):** The regulators will discuss the possibility of any potential or perceived tension due to overlapping CMA and ICO regimes that the interests of both business and consumers are served. This will involve joint statements on AI foundation models to guide development and updating the 2021 joint statement on competition and data protection. There will be continued cooperation on supervisory and investigation activities and the continued evaluation of Google's compliance to CMA commitments on the Privacy Sandbox.
7. **Sharing the latest developments on cross-cutting digital issues:** The group will share knowledge on areas of shared interest such as online architecture, online advertising and privacy enhancing technologies (PETS). New areas of interest will also be discussed.
8. **Horizon Scanning and Emerging Technology**: The group will supplement the existing horizon scanning functions of the individual regulators to plan for new innovations, and the subsequent regulatory risks and opportunities. This will involve conducting and publishing research on the future of digital identity and deepfakes, as well as revisiting previous horizon scanning topics.
9. **Supervisory Technologies:** The group will explore opportunities to collaborate in the development of technologies to assist regulatory functions. This will involve exchanging information on use of machine learning and AI, and exploring how Large Language Models can be used to addressed complex regulatory issues.
10. **Skills and Capabilities:** In order to build the regulators' digital capabilities, the group will promote joint learning and development opportunities, embed graduate placement and staff secondment pathways between regulator and upskill for AI governance.

The Information Commissioner's Office

Given the significant overlap between data protection requirements and AI regulation it is no surprise that the ICO has been particularly proactive in respect of its regulation of AI.

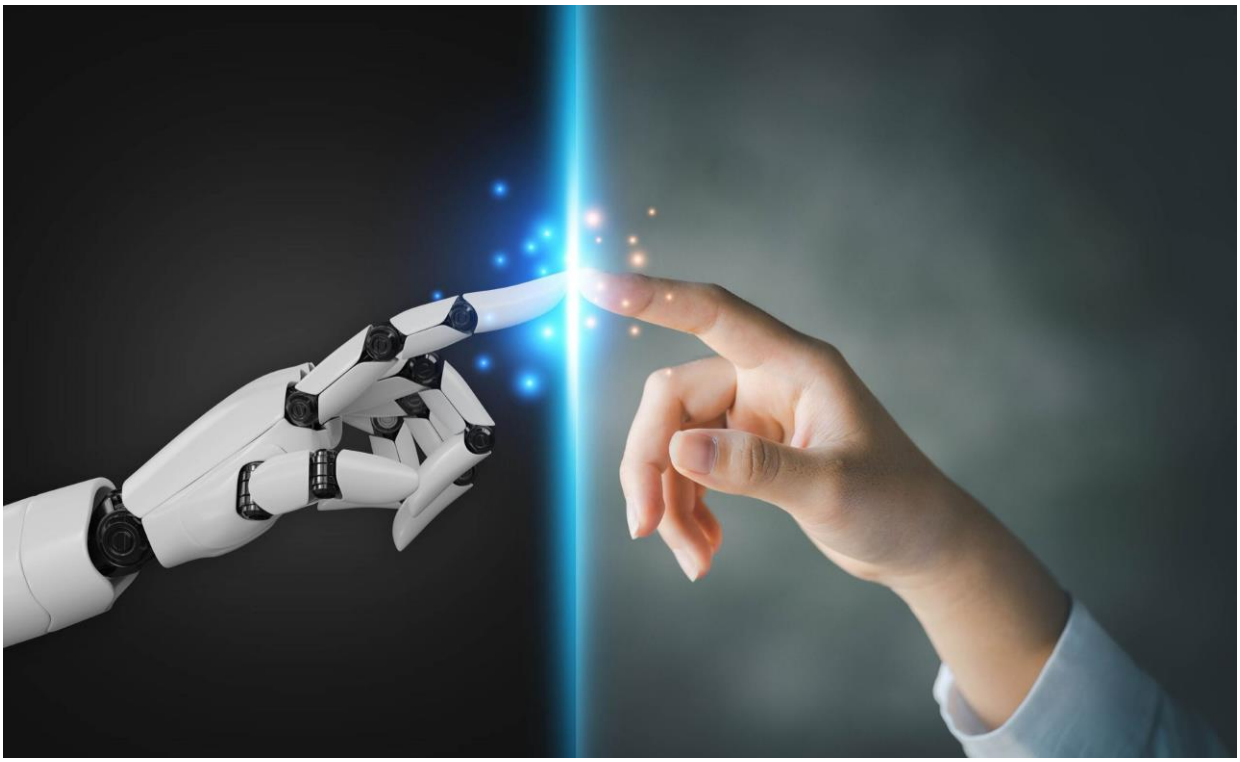
This activity has included:

- issuing extensive AI focused guidance[22] as well as practical resources including the "AI and data protection risk" toolkit[23]
- launching a consultation series[24], with the ICO's response being published on 13 December 2024[25], on Generative AI which looked at: i) the lawful basis for web scraping to train generative AI models; and ii) purpose limitation in the generative AI lifecycle; iii) accuracy of training data and model outputs; iv) engineering individual rights into generative AI models; and v) allocating controllership across the generative AI supply chain; and
- taking enforcement action. In October 2023, it issued a preliminary enforcement notice to Snap (Snap, Inc and Snap Group Limited) as a result of its purported failure to adequately assess risks posed to children by use of its generative chatbot, "My AI".

Providing a flexible framework enabling organisation to adapt to developments in AI, in its response to the White Paper as referenced above, the ICO suggests the principles-based approach of data protection law can be considered analogous to the proposed White Paper principles. The ICO therefore considers that it "has active experience of implementing the aims and objectives" of the White Paper principles.

The response reflects upon each of the five AI principles in the White Paper and highlights how these map to the existing data protection principles. The response also commented on the progress at the time of the proposals for the DPDI Bill (which, as noted above, has been replaced by proposals in the DUA Bill), highlighting that any future approach to AI regulation will be affected by this new legislation, but that the ICO's role in regulating AI will not, a position which presumably remains the case even in light of the new bill.

The published response from the ICO in respect of its consultation series on generative AI states that it has retained its position on purpose limitation, accuracy and controllership. However, interestingly the ICO has updated its position on the availability of legitimate interests as a lawful basis for web scraping to train generative AI models and on engineering individual rights into generative AI models[26].



The key takeaways are that, concerning web scraping and the availability of legitimate interests for generative AI, the ICO expects generative AI developers to significantly improve their approach to transparency. Regarding data subject rights, the ICO states that organisations acting as controllers must design and build systems that implement the data protection principles effectively and integrate necessary safeguards into the processing.

However, the ICO has been regulating AI for several years, with a landmark report on 'Big Data, Artificial Intelligence, Machine Learning and Data Protection'[27] first being published in 2014. As referenced earlier, the ICO has since developed a suite of guidance and products to help organisations navigate the use of AI with reference to data protection law. General guidance is regularly updated, along with supplementary guidance on Automated Decision-Making and Profiling[28], and Explaining Decisions Made by AI[29], guidance that was produced in partnership with the Alan Turing Institute. Specific applications of AI such as biometric recognition technologies[30] are also covered.

The response also refers to the ICO's award-winning AI and Data Protection Risk Toolkit, also referenced earlier, the Regulatory Sandbox and Innovation Advice service. In addition, the ICO undertakes consensual audits to help organisations assess their processing of personal data using AI and provides advice to improve their methods.

Regulatory action to promote compliance and safeguard individuals is a significant part of the ICO's remit. There have already been a small number of regulatory decisions in relation to the use of AI which the report highlights; the £7.5 million fine issued to Clearview AI (subject to ongoing legal proceedings)[31], the issue of enforcement notices to Serco Leisure[32] and others relating to the use of facial recognition and fingerprint scanning for employee monitoring, and an ongoing action relating to the use of generative AI chatbots on the social media platform Snapchat.

The ICO's response makes clear that the ICO will continue to actively scrutinise AI to safeguard users and the public from harm. The communication of regulatory outcomes is highlighted as a necessary tool to drive improvements. Collaboration with other regulators is also identified by the ICO as a key element of its strategic approach.

Thematically, and perhaps unsurprisingly, the ICO's strategic approach to AI regulation indicates a particular focus on children (recognising that children are a vulnerable group and more exposed to the risks of AI) and biometric technology (including biometric recognition and behaviour classification). The three enforcement actions noted in the ICO's response align with these focus areas.

The Bank of England and Prudential Regulation Authority

As set out in their response to the White Paper, the BoE and PRA are currently focused on "understanding how to support the safe and responsible adoption of AI/ML in financial services from a macro-financial and prudential perspective, given the potential benefits – including driving innovation – that AI/ML could bring to firms". For that purpose, the existing regulatory framework is considered to be 'well-equipped' for regulated firms use of AI and ML.

However, the BoE and PRA emphasise that although a technology-agnostic approach is currently being followed, the use of certain technologies affecting statutory objectives and creating risk for both firms and regulators may warrant new guidance and clarification of existing rules in due course. The BoE and PRA have various projects underway/planned to understand, assess and manage the risks presented by AI and ML including:

- Exploring four potential areas where further clarification on the regulatory framework could be beneficial, being: (1) Data Management; (2) Model Risk Management; (3) Governance; and (4) Operational Resilience and Third-Party Risks. In addition, deeper analysis on the potential financial stability implications of AI/ML will be undertaken over the course of this year. This analysis will be considered by the Financial Policy Committee.
- Working alongside other relevant authorities both domestically and internationally, ensuring that the UK financial system is resilient to risks that may arise from widespread adoption of AI/ML. The need for regulatory cooperation will be an ongoing process. Discussions are continuing with the FCA and other regulators around the safe adoption of AI and ML in the financial services sector.
- Working with the DRCF on selected AI projects, which includes conducting joint research to better understand cross-sector adoption of generative AI technology. The BoE is also a member of the Information Commissioner's AI and Regulators Working Group and is represented on the Alan Turing Institute's Standards Hub Regulators' Forum.
- Continuing to build on established frameworks to enhance the cyber and operational resilience of the financial sector.
- Commencing the third instalment of the 'ML in UK financial services' survey this year and considering the establishment of an industry-wide AI consortium to follow-up on the AI Public-Private Forum.
- Establishing a cross-organisation AI task force to ensure that progress using AI is made effectively, safely and responsibly. The three aims of the taskforce are to identify and pilot promising AI/ML use cases, to develop appropriate guiderails to ensure risks from using AI are controlled and identify training need to ensure AI/ML can be used effectively.

Financial Conduct Authority

The FCA's approach is that its rules, regulations and core principles do not usually mandate or prohibit specific technologies. Rather, its regulatory approach is to identify and mitigate risks to their objectives, including from regulated firms' reliance on different technologies, and the harms these could potentially create for consumers and financial markets. In practice, this means that when the FCA considers regulated firms' use of any given technology, such as AI, blockchain, cloud infrastructure etc., the FCA will objectively assess the risks and any adverse implications for our objectives and the regulatory outcomes we are seeking. This includes considering the impact the use of technologies can have at the level of the market.

How have the UK courts dealt with liability for AI?

Given the lack of specific legislation in respect of AI, how have the UK courts approached the issue of liability for AI?

Given the increasing prevalence of AI in information technology solutions it is surprising that there are only a few published Court cases in England & Wales which directly deal with or raise AI issues, i.e. cases where AI is central to the issue the Court is asked to decide rather than merely an incidental feature of the object of the dispute.

To date the overall approach of the Courts in England & Wales has been to apply established legal concepts to AI solutions in the same way in which the issues would be resolved in the absence of AI, rather than to develop new approaches.

Court Decisions

This is, for example, demonstrated by the widely reported decision of the Court of Appeal in *Comptroller–General of Patents, Designs and Trademarks v Emotional Perception AI Limited*[33] over the patentability of an AI system which deployed an artificial neural network to recommend data files. Ultimately the Court of Appeal's conclusion was that AI technology (and artificial neural networks in particular) fall under the definition of a "computer program" and that their patentability therefore needs to be assessed in the same way as for any other computer program. This in essence means that AI technologies must make a technical contribution in order to be patentable. However, the Supreme Court recently granted Emotional Perception AI Limited permission to appeal this decision and therefore we are likely to receive the Supreme Court's judgment in late-2025.

This traditional approach goes back some way. The case of *Tyndaris v MMWWVWM Limited*[34] arose from the fact that in 2017 investment fund Tyndaris started to use AI-based software to make investment decisions without human intervention based on real-time analysis of content (incl. news and social media activity). The deployment of the software very quickly resulted in losses of in excess of US$20m+ and the demand by Tyndaris' customer to suspend trading. While the resulting litigation settled, so that there was never any Court decision adjudicating on the issues in dispute, the way in which the case was put by the parties' lawyers largely followed traditional legal concepts: it was primarily phrased as a claim for misrepresentation by Tyndaris as to their pre-contractual promises over the capabilities of the AI-based software solution, the nature of the testing carried out, the appropriateness of human intervention etc.

This does of course not mean that the fact that the subject matter of a Court case involves AI is not something which is capable of requiring Courts and lawyers dealing with such cases to have to pay special attention to issues which arise from the inherently different way in which AI systems operate when compared to traditional computer software, in particular the fact that AI influenced outputs are not deterministic in the same way.

An example is the currently ongoing case of *Getty Images (US) Inc & Others v Stability AI Limited*[35] in which Getty allege infringement of their intellectual property rights as a result of Stability AI's alleged use of Getty's images for the purposes of training and development of an AI system (marketed as "Stable Diffusion") which automatically generates images based on text or image prompts.

In an interim decision handed down by the High Court[36], the Court applied established legal principles over, for example, the territorial scope of the English Courts' copyright infringement jurisdiction and what constitutes an "infringing copy", but expressly recognised that application to AI-based software raises issues which required determination at trial with the benefit of the full extent of the available evidence following disclosure, witness statements, cross-examination etc., for example regarding the factually potentially complex question as to where the training of an AI system has taken place and therefore whether it engages the jurisdiction of the English courts.

Risks of the black box

In addition to legal liability arising from breaches of AI specific legislative or regulatory standards or principles as set out above, AI-based software also has the potential to provide fruitful ground for litigation in areas other than intellectual property rights (cf. the *Emotional Perception AI* or *Getty Images* cases cited above) and (pre)contractual or tortious liability (cf. the case of *Tyndaris*).

For example the fact that most AI-based software solutions operate as "black box" systems, i.e. not even their developers or operators are able to explain how the AI system has come to a particular decision, does not only create evidential issues (e.g. when seeking to prove that an AI system meets contractually agreed or otherwise promised standards or includes appropriate safeguards), it also is at issue with many general regulatory standards (e.g. transparency requirements or accountability standards under UK GDPR in relation to personal data). Indeed, inherent issues with the way in which AI-based software operates are capable of compounding themselves, for example where the use of an AI-based system leads to discriminatory outputs it will be difficult to disprove discrimination where the software operates as a "black box" system, and it is not possible to reference individual decisions to non-discriminatory training data.

The fact that AI systems provide non-static outputs and are usually designed to constantly adapt and change, also raises issues over the level of testing required prior to deployment: while traditional determinative software can be tested to a particular level of operation (say x%), this is not in the same way possible with AI-based software as each further test has the potential to (and most likely will) influence the operation of the software itself.

Therefore, the increased risk potential of AI software solutions arises not only from the way the systems are trained (e.g. the use of personal or discriminatory data) but also from how they operate (e.g. as "black box" systems) and the output they generate (e.g. discriminatory decisions or defamatory statements).

What next for AI in the UK courts?

In conclusion new AI specific legal principles will most likely originate from legislative acts by Parliament or regulators, while the Courts will continue to apply established legal principles to such disputes despite the fact that in a case law legal system, such as England and Wales, Courts could theoretically make new law themselves. This in essence will in many cases mean that the AI solution will be treated as an extension of its developer or operator and its operation or output judged as if it were the output of the developer or operator itself. In other words, those deploying an AI solution will be held responsible for their choice to use an AI-based solution when performing a particular task in the same way as if they had performed the same task themselves.

Up to a certain point of "intelligence" of AI this approach will work well and ultimately reflects the fact that AI systems do not have separate legal personality from their developers or operators. Real questions over separate legal accountability are thereby (rightly) left to legislators. Until then, lawyers will have to grapple with potentially complex questions as to how traditional legal principles apply to AI-based solutions. However, such questions are unlikely to be answered by new legal principles specific to AI. Instead, the answers to these questions will be primarily methods of how to evidence compliance with contractual, regulatory, legislative etc. standards in light of a system of complex and obscure operation, incl. often the use of vast amounts of data without any direct way of demonstrating the relationship between the input into the system and its output.

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