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Response to the College of Policing consultation on data ethics and data driven technologies authorised professional practices

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Recently, the UK College of Policing conducted a consultation on new guidance in relation to the use of data driven technologies and data ethics in policing. DDTs process a wide variety of digitised data, including biometric data to inform policy decisions. Examples of DDTs include artificial intelligence (AI), machine learning and automated decision-making. This was an important consultation as the breadth of personal, sensitive, biased and inaccurate information that can be obtained by data driven technologies poses significant risks. These can be utilised in a way that negatively affects individuals' lives, employment, state benefits and immigration status.

This response highlights numerous issues and concerns regarding the proposed authorised professional practices (APPs). In particular, the APPs lacked clarity, consistency and foreseeability across police forces as well as a gender perspective in relation to data driven technologies and data ethics. Our response to the College of Policing consultation is outlined below.

College of Policing Consultation Question

Are the data ethics and data driven technology APPs easy to understand?

Response

Whilst the Data Ethics APP and Data Driven Technology APP are written in a language that is relatively easy to follow, there are numerous pieces of information missing. As a result, it is difficult to understand how these will be implemented and used across police forces.

For example, the Data Driven Technology APP refers to the risks in relation to contentious technologies, yet it doesn't specify what these contentious technologies are and how they are likely to be utilised by the police. To be able to understand and assess how far the APP safeguards the public when contentious technologies are

used, the APP needs to provide more clarity regarding what ‘contentious’ technologies are being referred to, when they should be used and how they should be used by the police. A lot is left up to each individual police force to decide, which inhibits understanding, predictability, foreseeability, and consistency. Further, both APPs also fail to provide information regarding who might be accountable for any unfair and biased decisions stemming from the use of DDTs.

Additionally, whilst the Data Ethics APP states that the police *should* pay attention to any risks that may threaten an individual’s or groups’ privacy or security, this does not go far enough. The APPs fails to clarify who will be responsible for ensuring that risks assessments are effective. Those involved in utilising and overseeing the technology must consider alternative methods that pose less risks to individuals or groups. It is questionable whether the use of invasive, contentious, technology can ever outweigh the risks posed to fundamental rights and freedoms. This is evident from the European Parliament vote last year to ban outright the use of live facial recognition technology,¹ something that is deployed far too often by the Met Police.²

Both APPs also need to go further and emphasise the risks faced by women. The rapid development of technology and AI has seen replication of pre-existing gendered bias stemming from historical data reflecting societal inequalities. Yet the APPs are gender blind and silent on the particular harms that can be caused to women when DDTs are deployed. The bias of data driven technologies has been widely reported. For example, recently a woman in Spain was murdered by her violent husband, after the Spanish police relied on a decision made by an algorithm (which scored how likely a domestic violence victim is to be abused again) and sent her home without any further

¹ Jorge Liboreiro & Aida Sanchez Alonso, ‘MEPs endorse blanket ban on live facial recognition in public spaces, rejecting targeted exemptions’ (Euronews, 14 June 2023) <<https://www.euronews.com/my-europe/2023/06/14/meps-endorse-blanket-ban-on-facial-recognition-in-public-spaces-rejecting-targeted-exempti>> accessed 18th December 2024

² [Yasemin Craggs Mersinoglu](#), ‘Met police use of facial recognition in London surges’ (Financial Times, 3rd October 2024)

<<https://bigbrotherwatch.org.uk/facialrec/financial-times-met-police-use-of-live-facial-recognition-skyrockets/>> accessed 18 December 2024

protection being granted.³ Further, data driven technologies used by private companies have also shown bias against women.⁴

Whilst the Data Ethics APP states that procedures must operate with fairness and impartiality, it is unclear how this will be ensured. It is also unclear how transparency will be attained and what measures will be implemented to ensure this.

Both APPs are ambiguous in places, talk in the abstract and fail to explain in real detail how their aims will be achieved, implemented, or measured. The APPs should be expanded to provide further clarity and instruction. The use of invasive DDTs poses serious threats to privacy and other fundamental rights, and therefore must be not only subject to strong oversight, safeguards, and transparency measures, but also these measures must be clear and implementable. The APPs need to ensure that the use of DDTs by police forces is subject to an external and independent auditing process. Currently, the APPs do not explain in sufficient detail how the police forces will be safeguarding people, promoting accountability, and understanding.

It would be quite difficult to achieve consistency of implementation of both APPs, as they are vague in many places and leave a lot of crucial decisions to the police forces themselves. As a result, this could lead to numerous inconsistencies as to how the procedures, risk management and governance amongst other things are applied and how any purported safeguards are implemented. As the Court said in *Bridges v South Wales Police* stated, "It may be prudent, however, for there to be at least consistency in the content of local policies..."⁵ It is also imperative that any policies adopted by forces must be published because otherwise the use and implementation of DDTs will not be accessible or foreseeable to the public, which it must be in order to be lawful.

³ Adam Satariano and Roser Toll Pifarre, 'An algorithm told police she was safe. Then her husband killed her' (NY Times, 18th July 2024) <[An Algorithm Told Police She Was Safe. Then Her Husband Killed Her. - The New York Times](#)> accessed 18th December 2024

⁴ Jeffrey Dastin, 'Insight-Amazon scraps secret AI recruiting tool that showed bias against women' (Reuters, 11 October 2018) <[Insight - Amazon scraps secret AI recruiting tool that showed bias against women | Reuters](#)> accessed 18 December 2024

⁵ *R (Bridges) v Chief Constable of South Wales Police & Ors* [2020] EWCA Civ 1058 para 118

College of Policing Consultation Question

Do the data ethics and data driven technology APP make it clear what senior leaders need to do?

Response

The governance section in the Data Driven Technologies APP states that senior leaders should establish appropriate governance arrangements. However, it is unclear what these are and if they are limited to internal arrangements, it is questionable how independent, impartial, or objective these will be.

It is not clear who should be charged with oversight of PCCs and Chief Constables. It is also unclear who should be responsible for any failures of DDTs, when those arise. As a result, it leaves a lot to subjective judgement of senior leaders, thereby hindering consistency in application across forces. Further, the APPs fails to outline any disciplinary proceedings or redress for relevant police forces involved in the use of DDT.

The governance section in the Data Driven Technologies APP states that 'the level of risk, complexity and operational effect associated with DDT will determine the level of scrutiny, oversight and engagement required'. This is very high level. It does not clarify how the level of risk will be measured and what correlated level of scrutiny, oversight and engagement is required. This fails to safeguard the public as it is uncertain what kind of scrutiny and oversight any given DDT will be subject to. More information is needed regarding the levels of risk that could arise, and the scrutiny this will lead to.

College of Policing Consultation Question

Do the data ethics and data driven technology APPs make it clear what officers, staff, project leads and senior leaders need to do?

Response

Privacy and data governance policy relies on project leads to define how, when and where the DDTs should be used. This leaves a lot of crucial decisions to project leads without implementing sufficient safeguards. There are no provisions for audits to take place across forces. As a result, a lot of these parameters will be subject to project leads understanding. This is unlikely to lead to consistency, especially in the absence of any regular auditing requirements.

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The APP on Data Driven Technologies encourages project leads to share the legal bases for using policing powers in relation to DDTs with key stakeholders. However, there are currently no specific legal basis for some of the most invasive DDTs being used, such as live facial recognition technology. Instead, the police rely on ‘common law policing powers’ which fail to provide enough predictability when and how these should be utilised. These also fail to provide women and other vulnerable groups any assurances surrounding safeguarding of their rights and fundamental freedoms.

Whilst the Data Driven Technologies APP refers to the Centre for Emerging Technology and Security (CETaS) framework for assessing proportionality of privacy intrusion of automated analytic methods, it also suggests that the project leads ‘might find it useful’. There is no obligation on the project leads to use. As a result, it is difficult to see how these assessments across forces will be in any way coherent or effective.

The APP also states that project leads should ensure that ‘testing should provide clear evidence, as far as possible in a controlled environment, that the DDT is robust, accurate and effective for its intended purpose, and works better than existing approaches and/or delivers a new policing capability. However, it is not clear how this will this be measured, who will evaluate and oversee the project leads decisions. These decisions can be subjective and can lead to different outcomes for different forces, thereby hindering consistency. Further, the DDT APP needs to ensure that any data used for testing needs to be representative and unbiased. Better guidelines on what quality data should be used need to be given. Different people to those designing and developing DDTs should be testing them for accuracy and effectiveness.

Technical evaluations should not just include false positive and false negative metrics, further metrics to assess fairness should be discussed.⁶ It is important that when testing the fairness metrics, a test sample is representative, including information from different demographics. Testing should also continue after the deployment of DDTs and regular checks must be undertaken to ensure that the technology is accurate, fair and unbiased. This is because bias can arise in a deployment of a DDT due to changes on the distributions of the data that it was built on.

⁶ Alessandro Castelnovo et al. ‘A clarification of the nuances in the fairness metrics landscape’ Sci Rep 12, 4209 (2022). <https://doi.org/10.1038/s41598-022-07939-1>

Whilst the design stage provides that parameters for evaluation would include cost benefit analysis etc, it is silent on the fairness of the DDT. It is unclear whether the DDT will be tested on different demographic groups (e.g. men and women). Further the parameters to measuring fairness need to be specified as there are multiple ways to define fairness in AI and some of them have trade-offs between them, including trade-offs between performance and fairness of a DDT. A fairness report needs to be produced explaining how the DDT performs in relation to different vulnerable groups and include the relevant information about the fairness definitions and any existing trade-offs.

College of Policing Consultation Question

Is there anything that needs to be added to the data driven technology or data ethics APP?

Response

More information needs to be provided in both APPs regarding how any safeguards will be implemented, how they will be reviewed, who will oversee this process and the deployment of DDTs over time. It is a welcome development to make use of the data analytics working group, and to include external expertise in this. However, the APP fails to clarify to what extent the Group's advice will have any weight on decisions being made. There is a risk that this will be a tick box exercise. Further, it is necessary that there should be experts in responsible AI amongst the group's participants. This will help to ensure that any DDT used will comply with fairness, privacy, transparency, and accountability.

The APPs should emphasise the need to follow responsible AI principles. It is also necessary that the data analytics working group will include social scientists and technological ethics experts to ensure that relevant safeguards are in place.

The Data Driven Technology APP states that for high-risk projects, details of the project should be made public, including its rationale and business justification based on the evidence base. This does not go far enough. It is also necessary to inform the public of the risks these DDTs can pose to women, children, and other vulnerable groups.

Currently the APPs do not refer to Gender Impact Assessment and Children Impact Assessment. As a result, the negative implications of DDTs on children or women are not considered at all. It is imperative that these are conducted alongside Data Protection Impact Assessments, Equality Impact Assessments and Human Rights Impact Assessments. All of these should be made public.

It is encouraging to see that officers, staff and volunteers will receive appropriate training and development with a particular focus on equality, human rights and data protection obligations. However, this training must not be simply a tick box exercise. Further, equality training often doesn't encompass training in relation to gender stereotypes and violence against women. Considering the murder of Sarah Everard⁷ and the damning report criticising the Metropolitan Police on the account of sexism and misogyny, more needs to be done in relation to gender equality and attitudes towards women in the police forces.⁸ This is especially considering that any misogynistic attitudes coupled with access to invasive data driven technologies can be significantly misused by officers.

A recent study on online violence against women highlighted the mistrust victims of online violence have towards the police because of situations involving police officers such as Wayne Couzens and David Carrick.⁹ As a result, more needs to be done to safeguard women when DDTs are being deployed by police forces.

Further, any training undertaken needs to ensure that officers do not blindly follow the advice of DDTs and measures must be implemented to ensure that this doesn't happen. The Data Driven Technology APP also needs to include a safety by design provisions and approach to be embedded in the development of DDTs. The design stage outlined in this APP should make clearer that representation of every vulnerable group is needed for the quality data used in the training. Evaluations need to be

⁷ Vikram Dodd, 'Devastating report lays bare police failings over Sarah Everard's killer' (The Guardian, 29th February 2024) <https://www.theguardian.com/uk-news/2024/feb/29/killer-of-sarah-everard-should-never-have-joined-police-report-finds> accessed 18th December 2024.

⁸ Vikram Dodd, 'Met police found to be institutionally racist, misogynistic and homophobic' (The Guardian, 21 March 2023) <[Met police found to be institutionally racist, misogynistic and homophobic | Metropolitan police | The Guardian](#)> accessed 18 December 2024.

⁹ Olga Jurasz, 'Online Violence Against Women: A Four Nations Study' (The Open University, 2024) <[Open Research Online](#)> accessed 18 December 2024

carried out prior to deployment of DDT and after the deployment of DDT. Data changes with time therefore the performance and fairness of the DDT might change. As a result, regular audits need to be performed. Also, if the DDT is adapted in any way with new data, all the evaluation processes need to be repeated, prior to deployment of the new version of the DDT being deployed and after the deployment.

College of Policing Consultation Question

What impact do you think the data driven technology APP or data ethics APP could have on individual members of the public

Response

The ICO has in the past been very critical of the way police use digital technologies to extract data from mobile phones and highlighted numerous risks and failures by the police in terms of data protection and privacy rights.¹⁰ This is just one example of many, and when combined with potentially invasive digital technologies, it may significantly harm individuals and groups fundamental rights and freedoms. Further, both APPs are silent on the need to implement a robust system of redress to allow individuals to challenge the way these technologies have been applied to them, if they fear it to be unlawful. The current transparency framework is insufficient for individuals to understand when and how these DDTs may be applied.

Whilst the Data Ethics APP states that the digital technologies should be used ethically or in accordance with human rights, the current safeguards are insufficient to ensure this is the case. The high-level statements cannot ensure compliance with the ethical standards, human rights and equality principles. Both APPs fail to provide concrete steps to protect the public, nor outline details of the redress or disciplinary procedures as a result of misuse of DDTs. It is crucial not just that the police forces adhere to the ethical principles, but also, that relevant, clear and effective safeguards exist, are enforceable, and are enforced. There are significant concerns about the possible bias of the technology, which coupled with the reputation of some of the police forces as

¹⁰ Privacy International, 'Press Release: Critical ICO report says the Police must stop taking data from victims phones without better safeguards' (18th June 2020) <Press release: Critical ICO report says the Police must stop taking data from victims' phones without better safeguards | Privacy International> accessed 18 December 2024

racist, misogynistic and homophobic,¹¹ leaves a lot of concerns surrounding the police use of these invasive DDTs.

More generally, being able to choose when and how to disclose one's identity, and to whom, is at the heart of a person's dignity and autonomy. In some cases, identification determines how the State interacts with people and whether they are afforded access to their rights. The rapid advances in the field of artificial intelligence and machine learning, and the deployment of new technologies that seek to analyse, identify, profile, and predict, by police, have and will continue to have a seismic impact on the way society is policed. The use of invasive technologies represents a huge shift in the relationship between the individual and the State, and for our right to remain anonymous more broadly. The implications come not solely from privacy and data protection perspectives, but from the ethical question for a democratic society of permitting the roll out of such intrusive technology. The technology risks violating our dignity and contradicting the essence of our rights. It unacceptably weakens the core of several freedoms, and casts a chilling effect on society by imposing a sense of constant surveillance.

College of Policing Consultation Question

If you have any additional comments on the data driven technology APP or data ethics APP, please provide them below. (Please avoid providing comments already detailed earlier in the survey).

Response

Both APPs need to be clearer and stronger in relation to safeguarding the public's fundamental rights and freedoms. Whilst the Data Ethics APP emphasises that the human in the loop makes the decision advised by the technology, it is unclear how this will be ensured. The APP does not explain what steps need to be taken to ensure that the human in loop does not take the technological advice at face value. As a result, this fails to achieve the desired protection from misuse and overreliance on DDTs.

¹¹ Vikram Dodd, 'Met police found to be institutionally racist, misogynistic and homophobic' (The Guardian, 21 March 2023) <[Met police found to be institutionally racist, misogynistic and homophobic | Metropolitan police | The Guardian](#)> accessed 18 December 2024.

Further, the decision tool itself may still be biased and can be unnoticed by the human in the loop. Measures to identify and mitigate potential bias on the technology should be applied as well to the decisions taken with the human in the loop.