



#### Proposal 8:

##### ONS are proposing to:

- Allow the speculative analysis of ONS microdata with the intention of making a profit, where ONS believe that profit would be generated by the sale of the results of analysis only, and never the sale of the underlying data.
- ONS would only grant such access when satisfied that the research project would serve the public good, and not compromise any of the existing safeguards.

**“Your personal information is protected by law. Census information is kept confidential for 100 years.”**

So states the front of the census form.

ONS has always “protected” what data it releases for public benefit from the census. Yet all forms of protection have some impact on the data and so for some very specific purposes, where no other data will do, access is given to legitimate researchers in a tightly controlled setting.

What these researchers get access to is effectively the raw data provided to the ONS, i.e. all but names. (The data contains postcodes, dates of birth, etc.) For the purpose of legitimate research, those decisions are made in the public interest, tightly controlled, with individual and institutional reputations on the line.

The ONS now proposes to allow commercial entities into its “safe” setting, for an expanded range of purposes, at least some of which are led by profit and not purely public benefit. Indeed, the expanded definition of “public good” in Proposal 7 permits a range of possible uses that commercial interests might (successfully) argue meet the criteria, but which offer little or no real public benefit.

In the past, the data made available to profit-seeking entities was specifically designed to protect the individuals contained within it from predation. This proposal removes that protection, and adds a new justification for access: where there’s money to be made.

Flexibility that has worked up to now in a broadly academic context, e.g. allowing access to PhD students because of their institutional backing, will no longer function when guarantees are given by companies that exist solely for the purpose of bypassing the rules, and are simply closed down after they get what they want. What was flexibility will become liability, and a serious threat to public confidence.

This proposal is completely unacceptable.

If ONS wishes to follow NHS England's path and suffer a humiliating and catastrophic loss of public trust, as well as business and economic confidence, this would be a remarkably effective way of doing so.

This proposal takes the definition of "statistical research" and effectively twists it to mean *any* use of data that passes a committee of the ONS.

While new primary legislation could make such a proposal lawful, the consequences would likely be as dire. It should be noted that NHS England officials believe the Health and Social Care Act 2012 gave them *carte blanche* to sell NHS patient data; the public, professions and Parliament disagreed.

### **Toxic handling of NHS data infecting the ONS**

Though public opinion has been well understood for many years, public outcry in 2014 at the sale<sup>1</sup> of patients' health data was apparently a surprise to the HSCIC. It clearly believed there was nothing wrong in a handful of companies making comparatively small amounts of money from the "commercial re-use" of 1 billion unprotected health records.

No cost-benefit analysis has ever been made as to whether these sales were in the public interest, but an interesting academic research question may now be whether it proved wise for the UK economy, given the costs (including reputational and opportunity loss) they have now incurred.

It appears ONS now proposes to repeat that experience with its own reputation.

### **Single-strike rule?**

Following the health data debacle, the Government announced a "one strike and you're out" rule for misuse of health data<sup>2</sup>.

These promises have not yet been implemented, and will not be implemented in advance of the general election - when all political promises get reset. The "Confidentiality Advisory Group" regulations under the Care Act 2014, promised last year, are still missing in action. And without them, the "strong legal safeguard" of single-strike sanctions simply doesn't exist.

But even a political promise of future legislation is more than ONS can offer as reassurance. Absent a statutory basis, under current rules, the burden of proof to exclude a reckless organisation would effectively be impossible to meet for a private sector organisation.

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<sup>1</sup> on a "cost recovery" basis.

<sup>2</sup> House of Commons Hansard: 25 Mar 2014 : Column 57WH - <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140325/halltext/140325h0002.htm>

## **What is in the public interest?**

For an identified public good, the beneficial need can be met by any organisation willing to fund those who are Approved Researchers to conduct analysis for publication - thus public, not private, benefit. The introduction of profit motive and even temporary competitive advantage runs counter to the perception, and in all likelihood the actuality, of public interest.

Such 'separation of powers' would also help mitigate risk of information leakages into sensitive data through organisations' contextual knowledge and experience. We presume this is generally desirable.

## **Relationships to other Government data collections**

Access to the highly restricted data for the British Crime Survey requires only ONS Approved Researcher status, and an approval from the Home Office (as owning department). Given the opaque nature of the latter, we have serious concerns at what this could mean for highly sensitive aspects of the Crime Survey in particular, but also other data sets with similar rules. This also raises the question as to how past commitments to respondents will be met, especially with regard to politically sensitive queries.

Any form of commercial access is fundamentally incompatible with such data; there is no evidence that this and the potential consequences have been considered.