UK Finance

ICO consultation – draft guidance on Distributed Ledger Technologies

UK Finance response

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Introduction

UK finance is the collective voice for the banking and finance industry. Representing 300 firms, we're a centre of trust, expertise and collaboration at the heart of financial services, championing a thriving sector and building a better society.

We welcome the opportunity to respond to this consultation on the ICO's draft guidance on Distributed Ledger Technologies (DLT).

To discuss this submission in more detail or for any queries, please contact Walter McCahon, Principal: Privacy and Data Ethics, at Walter.McCahon@ukfinance.org.uk.

Consultation response

Policy issue: Restricted use of permissionless blockchains

- One concern some UK Finance members have raised is that the draft ICO guidance sets narrow circumstances under which firms can use permissionless blockchains in relation to personal data.
- We note of course that the ICO provides *guidance* on the law, rather than being able to *change* the law. That said, the thresholds and requirements recommended under the draft guidance do appear to significantly constrain firms' utilisation of these blockchains, counter to the aims of other authorities in the wider UK policy environment.
- This wider environment includes HM Treasury developing a regulatory framework for cryptoassets and stablecoins[1]. Alongside this, the Financial Conduct Authority (FCA) is looking to permit the use of permissionless blockchains (with appropriate guardrails and carve outs) within regulated crypto activities. For example, the FCA's recent **consultation on the application of the FCA handbook for regulated crypto asset activities** (CP25/25) proposes disapplying outsourcing requirements (SYSC 8.1.1[R]) for permissionless DLTs due to a lack of centralised control following the nature of these blockchains.
- More broadly, several initiatives are underway to review the compatibility of financial services regulation with emerging DLT technology (e.g. **Wholesale Financial Markets Digital Strategy**).

[1] See **UK Finance's response to HM Treasury's draft Cryptoassets Order**.

- This also relates to a wider issue we have been advocating on[2], which is for HM Treasury to take a greater role in formulating a coherent strategic approach to developing the crypto regulatory framework. This should include coordinating the different government departments and sectoral regulators involved in creating policy, rules and guidance documents that will apply to regulated stablecoins and cryptoassets.
- We note that this is a complex issue facing policymakers, as:
  - the rules and the technology are complex,
  - potential risks involved in permissionless blockchains need to be fully considered, and
  - the rationale for why firms may choose to utilise permissionless blockchains over other blockchain systems (including permissioned blockchains).
- It might be that achieving the right balance requires a review of the UK GDPR and Data Protection Act 2018 rules and exemptions. As such, we recommend further engagement between HM Treasury, the FCA, Bank of England, ICO and the Department for Science, Innovation and Technology (DSIT) on all considerations (including potential risks) around how firms could utilise permissionless blockchains under data protection legislation and whether any amendments might be warranted, while maintaining appropriate safeguards.

Technical comments on the guidance

AI and blockchain

- Some UK Finance members highlight that AI and blockchain has not been considered under the draft guidance, but that AI could bring a number of benefits (including privacy benefits) when integrated with blockchain. An example of this would be use of AI to analyse blockchain transactions to detect fraud patterns.
- We note that the Data (Use and Access) Act changes to GDPR Article 22 have yet to take effect, with draft ICO guidance expected soon. This would be a useful topic for further consultation, bringing these issues together in due course.

[2] See page 8 of UK Finance's response to the FCA's 'Regulating Cryptoassets: Admissions & Disclosures and Market Abuse Regime for Cryptoassets'.

Potential claims and data subject rights

- Potential claims from data subjects or requests for information on the location of their data, and the participants processing that data, could be complex given that personal data is replicated and shared across many nodes with potential involvement across different jurisdictions. It would therefore be helpful for the ICO to provide guidance on this topic.
- Additionally, given that there are potentially multiple participants involved (e.g. node developer, node operator) who may independently or jointly determine how personal data is being processed, a flowchart would also be useful to assist firms with identifying controller and processor roles against participants.
- Separately, the draft guidance notes the potential for innovation to enable 'purging' of personal and/or historic data as a future possibility. Our members note that chameleon hash functions would enable data on DLT to be changed and/or deleted under certain conditions. This would avoid the necessity for keeping off-chain data. Members also query whether there may be circumstances in which hashing could be regarded as effectively achieving anonymisation.

Application of UK GDPR outside the UK

- Under the section 'Does UK data protection law apply if we are outside the UK?' the draft guidance suggests that participants involved in generating or mining blocks that record transactions may be monitoring the behaviour of people in the UK. It is currently unclear why participants involved in generating or mining blocks would be considered to be monitoring the behaviour of people. On the face of things, the core generation / mining activity does not seem to us to be monitoring, and this provision of the GDPR would only apply if the data were being reused for wider purposes.