

Entitlement Cards and Identity Fraud

The Information Commissioner's Response to the Government's Consultation Paper

Any proposal to establish a system of universally held identification documents involving the allocation of a unique personal number to the bulk of the population and under pinned by a central register of individuals raises important privacy and data protection issues. The consultation paper is an ambitious document suggesting a wide range of options as to the purpose to which an entitlement card could be put, the range of information upon it and various ways in which a central register may be established and operated. This wide range of suggested possibilities makes the consultation paper a difficult one to respond to with precise unequivocal answers. However, two things are certain:

- firstly, this is an issue worthy of the closest scrutiny and most careful reflection as the path laid out for us in the consultation paper has the potential to change the very nature of the society in which we live;
- secondly, such a proposal could only ever be acceptable if it included the necessary safeguards to ensure data protection compliance.

Although the breadth of the document presents a number of problems in marshalling a focussed response, the government's openness in embarking on an extensive and lengthy consultation exercise setting out a number of proposals, is welcome. The acceptance that entitlement cards will have little part to play in bringing criminals to justice or fighting terrorism enables the debate to side step these previously contentious issues. The recognition in the consultation paper that there are significant data protection and privacy issues to address puts such issues in their rightful place, at the very heart of the debate.

Although this is not the first time that proposals for a form of identification card have been advanced during the existence of data protection legislation in the United Kingdom, I have tried to approach this issue with an open mind but with one question central to my consideration of the proposals: will the benefits of an entitlement card be sufficient to outweigh the undoubted risks to privacy, human rights and our social values? During my predecessor's consideration of a previous government's proposals regarding identity cards back in 1995, she was unable to conclude that any of the predicted benefits outweighed the privacy and data protection costs. Since then society's needs have changed, we conduct far more business electronically or through call centres, the government is encouraging increased electronic service delivery by the public sector, all with the result that there are fewer opportunities to conduct business face to face where one person is known to the other. Individuals may have increased needs to be able to prove their identity with reliability and in a convenient way. Identity fraud still appears to be a persistent problem and there is nothing more sacrosanct to an individual than their own identity. There are clearly potential benefits to individuals to weigh in the balance. However, just as an individual's right to their own identity is important there are fewer more jealously guarded commodities than an individual's own personal privacy.

The proposals in the consultation paper demand careful and cautious reflection and I have attempted to help inform my own reaction by gleaning as much relevant

information as possible from those with relevant views or experience from which to profit. I have consulted widely amongst my data protection commissioner colleagues in Europe as many of our European neighbours have forms of identity schemes and importantly, the same approach to human rights and data protection as ourselves. I have attempted to foster debate amongst key stakeholders by organising a national conference on the government's proposals at which the Home Secretary presented the government's view, I learned much from the presentations and ensuing debate. I have also commissioned a research paper by a leading academic, and submit this as part of my response (Annex B). Although the views of the author are entirely his own and should not be taken as representing my own view, the analysis of public perceptions, wider social issues and the general conclusions drawn are of particular value and I commend this paper as a valuable contribution to the debate.

The consultation paper poses some 35 separate questions and I have responded to each of these from the perspective of my statutory functions in relation to the Data Protection Act 1998 and the Freedom of Information Act 2000 (Annex A). However, the answers to the individual questions do not add up to a clear indication of my overall view and this is set out below.

I have approached this matter with an open mind but with great caution because, as I have mentioned previously, we are dealing with matters touching on the very nature of the society in which we live. We must recognise that we may risk turning our society from one where the need to prove identity is commensurate with the service on offer, with complete anonymity being a real option in many circumstances, to one where the highest level of identity validation becomes the norm for the most mundane of services, one where we run the risk of the unique personal number being used to track our various interactions with the state and others, and to have all this recorded on a central register under its control. Of course, nothing in the government's current proposals is so draconian. But we must appreciate that, whilst we may be reassured that benign administrations will live up to their promises about limitations as to use, we will be creating a potentially powerful infrastructure. Our close European neighbours can account for how this can be misused at catastrophic social cost.

As mentioned earlier many of our European neighbours do have identity cards and population registers though not on the scale envisaged in the government's consultation paper. Many have had these for some time and unlike in this country, where such measures in the past have been treated with suspicion and as something only to be adopted in times of national emergency, they have become an unquestioned feature in society. They all do have data protection and human rights legislation and I have asked national data protection commissioners about their experiences of the more limited schemes in their countries. There is a fairly consistent response that these cause no significant difficulties to them in data protection terms. In some instances this could be because their particular schemes predate data protection legislation and this has taken account of their existence when introduced but the lack of widespread problems helps to reinforce my view that there is no inherent reason why all such proposals would be unacceptable on data protection and human rights grounds. The question is: will the particular scheme meet the necessary data protection requirements?

Turning to the government's proposals, I face a real difficulty in knowing what the scheme that is being proposed really amounts to. The consultation paper puts forward a diverse range of purposes ranging from reducing identity fraud to aiding voter

registration, from facilitating access to government services to assisting emergency medical treatment. The consultation paper does not rest at the currently identified potential purposes but solicits suggestions for even more, particularly from the private sector. The existence of so many potential options makes it impossible to come to any firm conclusion as to whether the benefits would outweigh the risks to privacy, human rights and social values quite apart from the financial costs.

The absence of a limited and clearly defined purpose, or set of purposes, causes a number of difficulties for those wishing to respond:

- those of us charged with looking at whether the proposals are proportionate to the problems individuals and society face find it impossible to come to such a judgement and are left with severe reservations about the other potential uses, many of which appear to be almost makeweights;
- those of us who wish to identify the specific safeguards cannot do so because the purpose of the scheme has not yet been adequately determined;
- those worried about costs find these difficult to calculate with many suspecting a significant underestimation and a consequent financial imposition on individuals;
- those with technical and project management expertise suggest that this is a recipe for failure at the project level.

I believe that without a much more restricted and closely focussed group of purposes there would be substantial risks attached to these proposals proceeding. If the government decides to pursue such proposals then a second more narrowly focussed proposal should be consulted upon through a White Paper accompanied or followed by a draft bill. I also believe that there may be merit in divorcing what appear to be twin concepts in the consultation document, the existence of both an entitlement card and a central register, possibly a national population register. It does not follow that these have to go hand in hand and both have significant issues attached to them in their own right and are worthy of separate scrutiny.

Although the diversity of potential purposes has complicated matters, the consultation paper does nevertheless allow initial consideration of some of the safeguards that will have to be put in place and these are set out below.

I am concerned that although there may be plausible arguments made for the introduction of an entitlement card scheme in the short term there is the potential for function creep as administrative and political priorities change or even just to maximise the use of a costly infrastructure. Establishing a scheme on the basis of particular pressing needs in a way that would permit its subsequent use for other less desirable or unwarranted purposes would be of serious concern. To help guard against this I welcome the government's assurances about putting any scheme on a statutory footing but I do not think these assurances go far enough as they envisage the use of secondary legislation for changes. I am concerned to minimise any function creep in the future and that the mechanism of primary legislation should be necessary for any such changes to be implemented. Such legislation must include strong effective restrictions against inappropriate demands on an individual to produce their card for inspection by others. It should be remembered that it is not the simple possession of a card that may have an impact on individuals; it is placing them in the position of having to identify themselves by use of it that may be the cause of real concern.

I also believe that leaving responsibility for the administration of the scheme and any central register(s) with a government department is not a sufficient safeguard. Any scheme and register should be under the control of a new independent statutory body accountable to Parliament for the conduct of its functions. If an entitlement card scheme is established, there will be need to be a substantial educational programme to ensure individuals and service providers understand the circumstances where a card should or should not be used. This educational role could also be given to the suggested independent body.

I also feel that if identity fraud is the central concern, then insufficient consideration has been given to whether other card issuers such as financial institutions, could have a role to play in identity verification, particularly as the use of private sector databases is envisaged for this purpose, and card issue. This would remove the need for a monolithic central register. This may also provide opportunities for including digital certificates to provide safeguards for on-line transactions.

Turning to the arrangements for establishing a scheme, it is proposed that the driving licence and proposed passport card should form the bulk of the cards issued, amended to reflect the needs of the entitlement card scheme. This has a number of significant difficulties attached to it. I am concerned that the existing collections of data held particularly in the case of the driving licence, were not compiled with identity verification in mind. The existing quality of the data will be inadequate for the issue of entitlement cards without substantial enrichment. This will be an essential requirement. The government recognises this and has suggestions about the utilisation of its own information and the use of credit reference agency information to show economic activity to help root out false applications before the issuing of cards. I remain concerned that there may be an unrealistic view of the value of this sort of information particularly where individuals are young, involved in limited economic activity or have been absent from or are newly arrived in the UK. The extent to which electoral roll information may be of value has also been overestimated.

If an entitlement card scheme was introduced the card itself would be viewed as having an unrivalled status in terms of identity verification. It may be relied upon as the definitive proof of an individual's identity and other particulars relating to them. If this is the case it must be established and maintained with reliable and high quality data. Extreme care must be taken to ensure that existing data and documents used as part of the issuing process are up to the necessary standard and can be relied upon. The potential for mistakes and errors being introduced during the processing of applications or the maintenance the scheme should not be underestimated. The consultation paper recognises that the card itself will become the target of forgers and counterfeiters. To fail to address these matters would run a risk of individuals suffering serious detrimental effects in the variety of circumstances where they may be required to use an entitlement card.

If a reliable indicator of identity is the core aim of the scheme then it should seek to achieve this aim in the most reliable way. It is recognised that the inclusion of a biometric encrypted on a smartcard chip would be a way to link identity to a particular person by way of a 'unique' physical characteristic. To put in place the necessary infrastructure will be expensive but any scheme must be fit for its identified purpose. If

the necessary infrastructure cannot be put in place then this calls into question the value of the card as a reliable and strong validator of identity.

Turning to the card itself, the use of a function specific card such as the driving licence poses real concerns when additional information is endorsed upon the face of it. This runs the risk that organisations may be tempted to capture this extra information and this would be intrusive. The information endorsed on the front of any card must be kept to a bare minimum with extra information encrypted on to the smartcard chip and only available for view by those who need to know it. Such an entitlement card's aim should be limited to identifying an individual in order to gain secure access to the necessary information held securely elsewhere.

The security arrangements surrounding an entitlement card scheme would have to be robust given its own potential to be turned to the advantage of the identity fraudster. In addition to the need to ensure that cards are only issued to bona fide applicants, the range of information appearing on a card could be at real risk of perpetuating, rather than reducing, identity fraud. Including so much detailed information, such as address and various identification numbers, on the face of a card that will be used in many circumstances runs the risk that this may gain greater currency and be used to gain unauthorised access to information about that individual if it falls into the wrong hands.

If a central register is to be established then the information contained within it should be the minimum necessary to permit the efficient functioning of the entitlement card scheme. This should not include details of the particular services being sought and any audit trails of access should not be available for any other purpose than identifying misuse.

The issue of what are the appropriate safeguards again stem from what are the purposes for which it is intended to be used. It is clear there needs to be strong prohibition on the misuse of entitlement cards, the information held on them and the central register in addition to those safeguards provided by the Data Protection Act 1998. It has been suggested that a new criminal offence of identity fraud be created. Great care needs to be taken to avoid criminalising the assumption of a fictitious identity to preserve anonymity in legitimate or inconsequential circumstances.

In addition a number of data protection provisions could be strengthened. The consultation paper recognises that any unique personal number needs to be designated as an identifier of general application under the Data Protection Act 1998. This should include safeguards against wider use. My powers in respect of inspection could also be extended to ensure specific and proactive scrutiny of the operation of the scheme. Enforced subject access to any data held on the smartcard chip and central register should also be prohibited. Given that an aim of the scheme would be to make identity fraud much harder a compensatory review of existing legislation facilitating data matching could be undertaken to see if such privacy intrusive powers are still warranted.

In conclusion, I am of the view that it is not appropriate to take the stance that an entitlement card scheme should never be proceeded with on the grounds that there will always be insurmountable privacy and data protection obstacles. It may be possible to establish a scheme with the necessary data protection safeguards in place. However,

I am not satisfied that the current proposals would lead to establishing a data protection compliant scheme. A much more focussed proposal needs to be brought forward with greater safeguards in relation to the quality, amount, and adequacy of the data in relation to those narrower purposes. However, and most significantly, any new proposals need to have much more reliable safeguards against function creep over time, with strict legislation and independent control being crucial features. The government made clear in its consultation paper that for any entitlement card scheme to be established it must address data protection requirements. These are not optional features but mandatory legal safeguards. Should government decide to take forward its proposals I would be happy to work with government to help ensure that only a scheme that is fully compliant with data protection legislation is developed.

Richard Thomas
Information Commissioner
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