

## Regulating for Results in the Digital World

### Abstract of the CIPL Discussion Paper, September 2017

The functions of Data Protection Authorities (DPAs) are numerous. Expectations are high. Resources are meagre.

How can regulation of data protection be as effective and “results-based” as possible? How can the best outcomes for individuals and society be achieved? This involves making difficult, but essential, choices about strategies and priorities. DPAs simply cannot do everything.

There should be clarity about what results are sought. This involves looking beyond mere compliance with the formal requirements of the law. Regulating data protection must be about much more than checking the paperwork. It means aiming for a digital world where people flourish with dignity as autonomous individuals. DPAs should seek results in terms of organisational behaviours. Organisations should avoid data uses which impair the quality of life for individuals by denying them the privacy to which they are entitled. Effective DPAs also promote a society where a good quality of life for individuals flows from genuine and widespread privacy.

A Results-based Approach involves learning from some of the modern and strategic approaches which have been successfully adopted in many other spheres of regulation. Four different types of DPA responsibility can be identified and prioritised – Leader, Police Officer, Complaint-Handler and Authoriser. It is suggested that the Leadership function should have the top priority - helping and guiding organisations which are seeking to “Get it Right” (the vast majority) while dealing firmly with those who are not even trying. This recognises that deterrence and punishment (the Police Officer role) can only have a limited effect in improving corporate behaviour.

A key part of regulatory Leadership involves Constructive Engagement with accountable organisations where there is a spirit of trust and mutual co-operation between DPAs and organisations which share the commitment to the same results.

CIPL’s Discussion Paper raises the key issues - it does not have all the answers. It does however propose a set of high-level Principles which are intended to inform the setting of strategic priorities by DPAs - including ranking different types of function, selecting the most appropriate tools, and targeting particular sectors, activities or organisations.

It must be for the DPA community to decide whether and how it wishes to take this thinking forward. The Discussion Paper concludes by highlighting ten key Questions which seek consensus about the best way to achieve a Results-based Approach.