

The specific challenges in the use of personal data in AI

- **AI/DP market is nowhere near 'mature'** so there are unusual, onerous and unnecessary terms around being demanded from suppliers. Many are unnecessary due to the nature of the processing or protections already existing in DP/IP/Compliance clauses
- **AI brings a challenge regarding opacity as a processor.** If clauses aiming to appoint a processor are opaque, this could result in the supplier being a controller.
- Generally, expect customers to:
 - Increase their DD on how you are processing personal data they give you.
 - Require accuracy/bias commitments – this may be linked to their 'legitimate interests' basis regarding use of AI on personal data datasets
 - Automated decision making (ADM) is 'higher risk' activity and so customer approach mirrors that.
- **Data (Use and Access) Act 2025 (DUAA) now in force.** Reality of 'recognised legitimate interests' and ADM parts of D(UA)A is it doesn't materially change things for suppliers.

Lessons learnt on using legitimate interests (LI) as a legal basis for the use of AI

- **EDPB opinion (28/2024) is helpful** clarificatory text for suppliers.
- **ICO guidance also relatively detailed** in this area. Expect more updated guidance soon post D(UA)A
- **The operation of LI imposes obligations on controllers who are relying on it**, and if processing expect to see clarity and precisions around:
 - Activity
 - Safeguards
 - Data minimisation
- **Operation of LI in relation to web-scraped data likely requires further risk mitigation steps**, again supplier might have imposed on them e.g.:
 - Personal data filtering
 - Special category data (SCD) removed

Current regulator guidance

ICO

- Has general AI guidance
- DPIAs: includes looking at the trade-offs between data minimisation and statistical accuracy.

EDPB

- Opinion 28/2024 covers LI, guidance on anonymisation and sanctions.

Current enforcement in the UK and EU

- Very much in forefront of regulators' mind
- **EU and beyond:** there are material enforcement actions e.g. OpenAI in Italy, DeepSeek (various).
- **UK:** we've had a large processor fine, Advanced Computer Software Group Ltd. While not AI-related, this could pave the way for AI-related fines for data protection breaches.

Supplier Tools/Mitigations

- The contract can be the supplier's best mitigation, with clarity on roles and responsibilities.
- Docs (Contract, LIA, DPIA, etc) all to be documented but also kept updated.

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