

Date: 10 April 2025

This advice represents the position as at the date the advice provided. Businesses should consult relevant information and guidance on regulators' websites to keep up-to-date with the latest developments.



CASE STUDY:

Regulatory Considerations for Building AI-Powered Accessible Digital Services

This is an anonymised version of a query submitted to the DRCF AI and Digital Hub ('the Hub').

The query in this case study has been responded to by the following DRCF regulators ('we', 'us', 'our'):

- Information Commissioner's Office ('ICO');
- Competition and Markets Authority ('CMA'); and
- Financial Conduct Authority ('FCA').

This informal advice is provided in line with the [Conditions for Participation](#).

Our informal advice is provided to a business based on our current understanding of the legal and regulatory frameworks within our remits and how they apply to the business's service. This informal advice should not be treated as an exhaustive account of the issues linked to a business's service or represent an endorsement of their proposed innovation.

Our informal advice is specific to a business's circumstances as described by them in the information they provided to the Hub.

Our informal advice is provided without prejudice to any future regulatory intervention by any DRCF or non-DRCF regulator and is not a substitute for independent legal advice which a business may wish to seek in advance of the launch of their service.

It is ultimately a business's responsibility to assess their position under the law and regulatory regime, with the benefit of independent legal advice as necessary. Recognising that some regulatory regimes are still developing and could change over time, businesses have a responsibility to keep up to date with the latest position.

A non-confidential version of the informal advice provided to the applicant is attached to this case study. This informal advice was provided on 10 April 2025 and represents the position as at 10 April 2025. Businesses should consult relevant information and guidance on regulators' websites to keep up to date with the latest developments.

Summary of Query and Response

Business H provides a B2B service that helps organisations deliver accessible digital services to their end users. Its AI-powered features included automated translation, dyslexia-friendly formatting, and avatar-based responses to written questions in WhatsApp. Business H currently focuses on supporting social housing providers in delivering clear and accessible guidance to tenants, but aims to expand into other areas, including job and education opportunities, financial information, and AI-driven customer support for commercial clients.

Business H sought clarification on its key regulatory considerations for using AI in this context.

- The **ICO** recommended that Business H maps out how personal data moves through its AI service, and clearly establish its controllership role with partner organisations and third party AI-providers.
- Business H must also identify its lawful basis for processing under Article 6 of the UK General Data Protection Regulation ('UK GDPR') and, where applicable, an Article 9 condition for special category data.
- Business H must ensure transparency of processing by informing users about how their personal data is used, including the use of AI, potential limitations, and third-party use.
- The **CMA** explained that the Digital Markets Competition and Consumer Act ('DMCCA') prohibits unfair commercial practices by traders which may harm consumers' economic interests. This includes prohibiting commercial practices that contravene the requirements of professional diligence, misleading actions, and misleading omissions.
- Where Business H sells its product to other businesses, the Business Protection from Misleading Marketing Regulations 2008 ('BPRs') prohibit Business H from giving misleading information to another business that would deceive that business and affect, or be likely to affect, its economic behaviour.

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- The **FCA** recommended that Business H reviews the Advice Guidance Boundary Review ('AGBR') and information contained in the recent consultation paper.

Introduction to the Regulators

The query has been responded to by the ICO, CMA and FCA. A brief introduction to each regulator has been included below.

Each regulator is responsible for separate legal regimes with different requirements that may be applicable to the same set of facts, and it will be necessary to take steps to comply with each regime as set out.

ICO

The Information Commissioner's Office ('ICO') is the UK's independent public authority set up to uphold information rights. The ICO oversees the UK General Data Protection Regulation ('UK GDPR'), which is relevant to this informal advice.

CMA

The Competition and Markets Authority ('CMA') is the UK's lead competition and consumer authority and an independent non-ministerial department of the UK government. The CMA helps people, businesses and the UK economy by promoting competitive markets and tackling unfair behaviour. The CMA enforces the following laws which are relevant to this informal advice:

- the unfair trading provisions in [Chapter 1 of Part 4](#) of the Digital Markets, Competition and Consumers Act 2024 ('DMCCA') which came into force on 6 April 2025 (although consumer law remains applicable to conduct taking place before 6 April). For further details about the DMCCA, see the CMA's [Unfair Commercial Practices Guidance](#).
- The Business Protection from Misleading Marketing Regulations 2008.

FCA

The Financial Conduct Authority ('FCA') is the UK's financial services regulator with focus on reducing and preventing serious harm, setting higher standards and promoting competition and positive change. The Government and FCA collaborated on a [Policy Paper](#)

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(DP23/5) as part of the Advice Guidance Boundary Review (the Review), which may be relevant to this informal advice.

Regulator Response References

In the table below, we set out the relevant regulator and the respective responses that they have input on. Each regulator is only responsible for the responses within their regulatory remit as noted in the table below.

Regulator	Relevant Responses
ICO	1
CMA	2
FCA	3

Response

1. Data Protection

Data Protection By Design and Default

- 1.1. Under the UK General Data Protection Regulation ('UK GDPR'), organisations must adopt a [Data Protection By Design and Default](#) approach. This involves embedding data protection considerations into a service from the outset, rather than treating them as an afterthought. Given that Business H's AI-powered accessibility tools process personal data – potentially including health-related data, such as through dyslexia-friendly formatting – it should proactively identify and address potential risks. A key step in this process is conducting a Data Protection Impact Assessment ('DPIA') to ensure appropriate safeguards are in place.
- 1.2. For example, one risk could be the accidental disclosure of health data due to inadequate security measures. A possible safeguard could involve encrypting all personal data both at rest and in transit to protect against unauthorised access.
- 1.3. To support Business H in assessing risks and implementing a 'Data Protection By Design and Default' approach, the ICO recommends Business H reviews the ICO's [DPIA](#) guidance and dedicated [AI and Data Protection Toolkit](#). The latter provides practical guidance on applying data protection principles to AI-powered services.

Data Mapping and Controllorship

- 1.4. To understand the key data protection considerations when using AI in a service, the DPIA should map out where personal data is processed. Based on the ICO's understanding of Business H's service, customers are referred to Business H's platform by social housing providers to access AI-powered accessibility tools. This means personal data is likely to be shared between the referring organisation and Business H.
- 1.5. Business H should also consider whether any personal data is shared with third-party AI providers that support its service. As Business H appears to sit between the referring organisation and an AI provider, it is important to clearly define what personal data is collected, how it flows through the service, and where it is stored. To help Business H with this, the ICO recommends including a personal data flow map within its DPIA. The ICO's ['What is Personal Data'](#) guidance may help with this.
- 1.6. One of the key reasons for creating a data map is to help assign responsibilities

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under data protection law. The controllership roles are:

- **Controller:** The organisation that decides why and how personal data is processed.
- **Joint Controller:** Two or more organisations that jointly decide why and how personal data is processed.
- **Processor:** The organisation that processes personal data on behalf of the controller, following its instructions.

- 1.7. Determining these roles depends on the nature of the processing, the context, and who has control over the data. It is ultimately up to Business H's responsibility to determine its role and agree this with its partner organisations. A key consideration is the level of control and influence over the 'why' (purposes) and 'how' (means) personal data is processed.
- 1.8. Business H should also consider its controllership role in relation to third-party AI providers. It is important to inform the organisations it works with about these AI providers so all parties are clear on their responsibilities.
- 1.9. To help Business H determine its controllership role and take appropriate next steps, including ensuring it has appropriate contracts in place, Business H is advised to review the ICO's guidance on [Controllers and Processors](#).

Lawful Basis and Special Category Data

- 1.10. Once Business H has determined the appropriate controllership role, it should consider the lawful basis for processing personal data under Article 6 of the UK GDPR. A lawful basis is essentially the reason for processing personal data. There are six available lawful bases, and no single basis is 'better' or more important than the others – which basis is most appropriate to use will depend on the nature of an organisation, its purpose for processing, and its relationship with the individuals whose data is being processed.
- 1.11. The responsibility for determining the lawful basis sits with the controller. If Business H determines that it is processing personal data on behalf of its partner organisations and therefore acting as a processor, then Business H will rely on the lawful basis determined by the partner organisation.
- 1.12. If special category data is involved, an additional condition under Article 9 of the UK GDPR is required. This may be relevant given Business H's dyslexia-friendly formatting feature, as processing information about an individual's dyslexia will constitute health data, which is a type of special category data.

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- 1.13. If Business H records that a user has dyslexia, an Article 9 condition must be identified. However, if Business H simply provides formatting options without collecting or storing information about a user's condition, an Article 9 condition will not be necessary.
- 1.14. It is important that Business H documents these considerations within its DPIA and conducts due diligence with its partner organisations to ensure that an appropriate lawful basis under Article 6 and a suitable condition under Article 9 are identified and selected.
- 1.15. To help with this, the ICO has produced guidance on [Lawful Bases](#) and [Special Category Data](#).

Transparency

- 1.16. Under Articles 13 and 14 of the UK GDPR, individuals have the [Right to Be Informed](#) about the collection and use of their personal data. Transparency is a fundamental requirement of the UK GDPR, ensuring that processing activities are clear, open, and honest from the outset. In practice, this means that individuals must be informed about who is processing their personal data, the purpose of the processing, the lawful basis, the special category data condition (if appropriate), retention periods, and any third parties with whom their personal data will be shared.
- 1.17. This information must be provided at the time of personal data collection and must be concise, intelligible, and easily accessible, using plain and clear language. Typically, this information is delivered through a privacy notice, which should be reviewed and updated regularly. If new processing activities arise, the controller must inform individuals before starting them.
- 1.18. In Business H's context, this means that the controller (or joint controllers) must ensure that users understand how their personal data is processed when they use Business H's AI-powered accessibility tools. Business H will likely need to help its partner organisations inform users that their personal data will be shared with Business H's service, and where applicable, with third-party AI providers. Business H will need to name these third-party AI providers or categorise them in a way that allows users to understand who is involved.
- 1.19. In addition, when using AI-powered tools, it is important to inform individuals about the potential implications of AI processing, such as the possibility of errors or biases. Users should be made aware of any limitations of the technology and how

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AI-outputs might affect the accuracy or reliability of the accessibility support they receive.

- 1.20. To support Business H in meeting its transparency obligations, Business H should review the ICO's guidance on [Transparency in AI](#) and its [Privacy Notice Generator](#).

Automated Decision-Making

- 1.21. [Automated Decision-Making](#) is the process of making decisions solely by automated means, without any human involvement. As the ICO understands Business H's service, its processing activities include both human and automated elements – both in obtaining user information and in delivering advice.
- 1.22. As such, Business H should be particularly mindful of Article 22(1) of the UK GDPR, which limits the use of solely automated decision-making when it produces a legal or similarly significant effect on individuals.
- 1.23. This consideration may be particularly relevant if Business H expands its service to include areas such as financial information. For instance, if AI-powered tools influence or encourage users to take financial actions, such as applying for a loan or selecting a specific financial product, Business H must assess whether its service has influenced user behaviour or choices, and whether this influence constitutes a decision with a significant effect on the individual. For more information on [Article 22](#), please refer to the link provided.

2. Consumer Protection

Unfair Commercial Practices

- 2.1. The DMCCA prohibits unfair commercial practices by traders which may harm consumers' economic interests. A 'trader' is someone who is acting for purposes relating to their business (and anyone acting in the name of, or on behalf of, that person) and consumer law will apply to their activities where they are related to the promotion or supply of a product (which includes goods, services or digital content) to (or from) consumers. 'Consumer' means an individual acting for purposes that are wholly or mainly outside that individual's business. As such, consumer law applies to a wide range of commercial behaviour such as advertising, marketing, sales, supplies and after-sales services. The law looks at the effect of commercial transactions on the notional 'average consumer' who is taken to be reasonably well informed, reasonably observant and reasonably circumspect.

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- 2.2. Where Business H supplies its AI software to commercial clients and they use Business H's product as part of the promotion or supply of a product to consumers, those businesses must comply with consumer law. Even where Business H, as the supplier of the software, does not have any direct dealings with consumers, consumer law will apply to Business H where its activities 'relate to' the promotion or supply of a product to (or from) consumers. Based on current consumer law rules and guidance, the CMA and the courts are likely to interpret this phrase broadly.
- 2.3. Where Business H service involves integrating a foundation model into a SME client's business to enable or facilitate the promotion or supply of consumer products, Business H's practice may therefore be related to the promotion or supply of products to consumers (subject to the specific context and nature of a client's practice). In that case, Business H will have responsibilities under consumer protection law, and it must take steps to ensure compliance. In particular, consumer law prohibits:
- Commercial practices that contravene the requirements of professional diligence (that is, the standard of skill and care which a trader may reasonably be expected to exercise towards consumers which is commensurate with either honest market practice or the general principle of good faith in a field of activity) and which are likely to cause the average consumer to take a transactional decision that the consumer would not have taken otherwise. 'Consumer' includes consumers who do not make purchases directly from an organisation. While it can be difficult to pinpoint responsibility for a particular failure, to the extent that a product is intended to be used by someone to promote or supply products to consumers, Business H should consider what steps may be necessary to ensure that its product does not harm end consumers. For example, this may include taking proactive steps to identify, assess and address the systemic risks of harm to consumers which might arise from the use of Business H's software, and considering whether it is providing sufficient information to commercial clients so they can comply with their own legal obligations when using Business H's product. This could include providing them with sufficiently detailed information about the performance and functionality of Business H's software, how it utilises other information to provide information to consumers, and the requirement to take steps that are necessary to ensure that consumers are provided with truthful and accurate information about

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products.

- Misleading actions, which occur when i) a business gives consumers false or misleading information or where a practice involves an overall presentation which is likely to deceive the average consumer about a product, trader or any other matter relevant to a transactional decision (even if the information is factually correct), and ii) this is likely to cause the average consumer to take a different decision. For example, Business H must take steps to ensure that information provided to consumers via its software is truthful and accurate, and does not deceive consumers about products which its clients promote or supply.
- Misleading omissions, which occur when a business fails to give consumers the information that they need, according to the context, to take an informed decision and where this is likely to cause the average consumer to take a different decision as a result. This includes omitting this 'material information', providing it in an unclear or untimely way, or failing to identify a practice's commercial intent (unless already apparent from the context). What information is 'material' will depend on the circumstances, including the nature of the product being promoted or supplied. For example, it could be a misleading omission where Business H's software is designed in a manner which provides incomplete responses to consumers. In addition, Business H's clients will have their own responsibilities in relation to providing consumers with material information e.g. which may include information on the fact that the response content they are seeing has been tailored by AI.

- 2.4. Business H should also refer to the CMA's AI [Foundation Models Report](#) (in particular paragraphs 6.7 to 6.12), which sets out the CMA's general views on compliance with consumer law, and reiterates the CMA's position that consumer law can also apply to suppliers of models (as well as end users).

Misleading Marketing to Businesses

- 2.5. Where Business H sells its product to other businesses, the Business Protection from Misleading Marketing Regulations 2008 ('BPRs') prohibit Business H from giving misleading information to another business that would deceive that business and affect, or be likely to affect, its economic behaviour. This includes giving false information about Business H's software inputs or how it works to produce content for consumers.

3. Financial Services Considerations

- 3.1. It is ultimately Business H (and Business H's client's) responsibility to ensure that it / its client has any necessary permissions to do any activity that is regulated by the FCA, and that its products (or services) comply with any FCA rules that apply.
- 3.2. The rules that apply to financial services firms currently distinguish between providing **regulated advice** and offering **guidance** in the form of factual information.
- 3.3. For example, a firm providing advice – where an adviser considers a consumer's overall financial circumstances and objectives before making recommendations to meet their objectives – would require FCA authorisation. Whereas, offering services that do not make personal recommendations but merely provide factual, generic information would not require authorisation, but it would still need to adhere to the FCA's high-level standards, including the fair, clear and not misleading rule in [COBS 4.2](#), as well as the [Consumer Duty](#).
- 3.4. To bridge the gap between the support customers require and what financial services firms are able to provide, the Government and the FCA collaborated on a [Policy Paper \(DP23/5\)](#) as part of the Advice Guidance Boundary Review (the Review). This paper outlined initial ideas to better enable consumers to access the help they want, when they need it, and at prices they can afford. It included 3 specific proposals:
 - **Targeted support** – a new form of support allowing authorised firms to provide suggestions that are appropriate to consumers with the same high-level characteristics.
 - **Simplified advice** – a new form of advice that makes it easier for firms to provide affordable personal recommendations to consumers with more straightforward needs and smaller sums to invest.
 - **Further clarifying the boundary** – providing greater certainty for authorised firms on scenarios where they can provide support that does not constitute regulated advice.
- 3.5. Further to this, in February 2025, the FCA closed its consultation on [CP 24/27](#) which sets out the FCA's high-level proposals for targeted support in pensions, as part of the Review. This follows the initial proposals mentioned in Paragraph 3.4 above. Targeted support would exist between current guidance-based services and more bespoke advice. It aims to help consumers, at scale, make effective, timely and properly informed decisions about their pensions. This FCA consultation explored how it sees this support working, and the conduct standards it is proposing to ensure better outcomes for consumers.

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- 3.6. Further, the FCA is planning to publish another consultation, with draft rules, by mid-2025, focused on targeted support in pensions and retail investing. It will also include an update on simplified advice and provide further clarity on the advice guidance boundary.