

## **DATA STEWARDSHIP: AN INTRODUCTION TO A NEW DIGITAL MARKET**

**Matthew Berry**

1 It is trite to observe that the volume of data that is generated and stored globally is increasing at an exponential rate. The value of this data, to individuals in the conduct of their everyday lives and to the businesses that collect and utilise it as an asset, is also growing rapidly.<sup>1</sup> However, in the UK, the EU and Jersey there is an increasing recognition that there are factors inhibiting economic growth that could be avoided by the better use of data. Among these factors is the absence of an internationally recognised governance ‘toolkit’ that can be used to facilitate the swift and efficient structuring of transactions and relationships concerning the administration of data.

2 The development of this data governance toolkit has the potential both to promote growth and to ensure that the benefits are shared with the public through the better protection of their rights and enhanced competition in the provision of services to them. Work is progressing in Jersey to consider whether its strengths as an autonomous state, with the proven ability to innovate, and its existing technological and legal infrastructure, will enable it to play a part in the development of these new tools and services. This work is now being spearheaded by a government-funded organisation, Digital Jersey, which is drawing on the wealth of professional expertise in the Island, as well as input from a range of leading academics and professionals. Digital Jersey expects to report on its work and its recommendations for the next phase of the development of this industry in the first quarter of 2022.

3 The opportunity for Jersey, building on its position as a leading financial centre and its expanding digital offering, is substantial. The legal profession has a vital role to play if Jersey is to compete successfully in this space, just as it plays a significant role in the success

---

<sup>1</sup> The exponential growth in the production of data, the potential for economic growth from its use to develop artificial intelligence and the need to provide for better data sharing governance frameworks as an enabler for this growth is explored in W Hall and J Pesenti, ‘Growing the Artificial Intelligence Industry in the UK’ (2017) [online]. Available at: [www.gov.uk/government/publications/growing-the-artificial-intelligence-industry-in-the-uk](http://www.gov.uk/government/publications/growing-the-artificial-intelligence-industry-in-the-uk) [Accessed 20 December 2021.]

of Jersey's financial services industry. This article aims to introduce briefly some key concepts that may be encountered as this market and Jersey's place in it are explored and developed in 2022 and beyond.

### **Data stewardship**

4 The concept of 'data stewardship' underpins much of the discussion. The term is shorthand for the idea that when administering data assets,<sup>2</sup> including by taking steps to enhance their value through appropriate data sharing or analysis, systems of governance should be adopted that promote the responsible administration of the assets. As a pioneer in the use of this term observed:

'Data stewardship is a concept with deep roots in the science and practice of data collection, sharing, and analysis. Reflecting the values of fair information practice, data stewardship denotes an approach to the management of data . . . The concept of a data steward is intended to convey a fiduciary (or trust) level of responsibility toward the data. Data governance is the process by which responsibilities of stewardship are conceptualized and carried out.'<sup>3</sup>

5 When data is stewarded well, it is submitted that it will also be used effectively and this will promote innovation and growth. Conversely, when data is stewarded poorly, this stifles innovation and may be harmful for individuals and businesses by reducing trust in those who might collect and use data.

6 The first challenge posed by the concept of data stewardship is to identify which governance systems should be adopted by current or potential data stewards, recognising that such systems may vary considerably depending on the nature of the data and purpose of its collection. This challenge is not new and a wide variety of businesses,

---

<sup>2</sup> The term 'data assets' is used here in a general rather than in any technical sense. There are a wide range of different digital assets, including what might be thought of as 'traditional' databases of information collected by businesses, a variety of publicly produced datasets for the delivery of services, and distributed ledgers and cryptocurrencies. A lot of attention has been focused on the stewardship of databases, particularly those containing personal data relating to individuals. However, the concept of data stewardship might be applied to a panoply of data assets.

<sup>3</sup> S Rosenbaum, 'Data Governance and Stewardship: Designing Data Stewardship Entities and Advancing Data Access', (2010) 45(5p2) *Health Services Research* 1442–1455. Available at: <https://doi.org/10.1111/j.1475-6773.2010.01140.x> [Accessed 18 February 2021.]

including those providing computing services, already carefully consider how best to steward their clients' data and adopt governance arrangements to comply with best practice and regulatory requirements.<sup>4</sup>

7 A further, and closely related challenge, which has recently received attention in the UK,<sup>5</sup> the EU<sup>6</sup> and Jersey, is to develop the specific governance and administration tools that might be adopted when a data steward or stewards are looking to enhance the value of their data assets, including by processing them together with other data assets or through employing new forms of analysis. The development of practical, value enhancing governance tools may promote growth by increasing the speed and efficiency with which data sharing or analysis may take place, and protect the rights and interests of private citizens by promoting the generation and adoption of consistent best practice.

### Data organisations

8 In some cases the most efficient and reliable means of establishing a governance arrangement for the sharing or analysis of data, in keeping

---

<sup>4</sup> Like the UK, the Bailiwicks of Jersey and Guernsey have each incorporated the EU's General Data Protection Regulation (EU Regulation 2016/679) into their domestic law through the adoption of the Data Protection (Jersey) Law 2018 and the Data Protection (Guernsey) Law 2018. Both jurisdictions therefore have regulatory frameworks in place that require the maintenance of high standards for the protection of personal data, including governance requirements.

<sup>5</sup> UK Government's *National Data Strategy* [online]. Available at: National Data Strategy ([www.gov.uk](http://www.gov.uk)). [Accessed 20 April 2021.] While promoting data sharing and re-use is a consistent theme of the strategy, Part 6 considers some of the mechanism for promoting collaboration between entities and the public sector. The Strategy quotes an Economic analysis by Ctrl-Shift that suggests that improvements in this area alone could result in an average 1.4% increase to UK GDP, which in 2017 would have constituted a £27.8bn increase.

<sup>6</sup> The EU's data strategy [online] Available at: European data strategy | European Commission ([europa.eu](http://europa.eu)). The European data strategy's purpose is to promote the EU's single market for data to allow data to flow freely within the EU and across sectors for the benefit of businesses, researchers and public administrations. Its work programme includes a proposal for an EU Regulation on European data governance (Data Governance Act) [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0767&from=EN> [Accessed 21 April 2021]. Chapter 3 of the proposed Regulation would introduce mechanisms that the Commission intends to help foster trust in data sharing intermediaries.

with the principles of data stewardship, may be to establish an organisation specifically for this purpose. Such an organisation may take a range of forms and might be incorporated, unincorporated or indeed founded on a legal relationship between persons, such as a trust.

9 A helpful analysis of the types of data organisations that might be established in the UK for this purpose can be found in the recent report<sup>7</sup> of the Legal Mechanisms for Data Stewardship Working Group ('the LMWG'). The LMWG report notes that there is a need for more robust independent data stewardship models for multi-party data transactions and that there are a range of legal arrangements that could help to facilitate responsible data stewardship in that context. The LMWG report focuses on what it refers to as 'data trusts', 'data cooperatives' and 'corporate and contractual mechanisms', and concludes that each of these can be 'powerful mechanisms in the data-governance toolbox'.<sup>8</sup> The report proposes a range of factors which might be relevant to deciding which model to adopt in a particular context.

10 One legal structure referred to with approval in the LMWG report is a foundation established in the Channel Islands.<sup>9</sup> In this regard, the LMWG refers to recent academic articles concerning the establishment of data foundations in the Channel Islands prepared in collaboration between a local company, Lapin, and the Southampton Web Science Institute.<sup>10</sup> As

---

<sup>7</sup> 'Exploring Legal Mechanisms for Data Stewardship', Legal Mechanisms for Data Stewardship Working Group established by the Ada Lovelace Institute and UK AI Council's, March 2021 [online]. Available at: [https://www.adalovelaceinstitute.org/wp-content/uploads/2021/03/Legal-mechanisms-for-data-stewardship\\_report\\_Ada\\_AI-Council-2.pdf](https://www.adalovelaceinstitute.org/wp-content/uploads/2021/03/Legal-mechanisms-for-data-stewardship_report_Ada_AI-Council-2.pdf) [Accessed 20 December 2021.]

<sup>8</sup> *Op cit*, at 5. The Report notes that there is no one-size-fits-all solution, but helpfully explores a range of factors that may influence the choice of governance mechanism used for any particular purpose.

<sup>9</sup> *Op cit*, see pp 81–88.

<sup>10</sup> See S Stalla-Bourdillon, L Carmichael and A Wintour, 'Fostering Trustworthy Data Sharing: Establishing Data Foundations in Practice', *Journal of Data & Policy*, 5 February 2021 [online]. Available at: <https://www.cambridge.org/core/journals/data-and-policy/article/fostering-trustworthy-data-sharing-establishing-data-foundations-in-practice/6D5F1284EC147C2808E016671A48AA50> [Accessed 20 December 2021]. See also S Stalla-Bourdillon, A Wintour and L Carmichael, 'Building Trust through Data Foundations: A Call for a Data Governance Model to Support Trustworthy Data Sharing', (2019) [online]. Available at: [https://cdn.southampton.ac.uk/assets/imported/transform/content-block/UsefulDownloads\\_Download/69C60B6AAC8C4404BB179EAFB71942C0/White%20Paper%202.pdf](https://cdn.southampton.ac.uk/assets/imported/transform/content-block/UsefulDownloads_Download/69C60B6AAC8C4404BB179EAFB71942C0/White%20Paper%202.pdf) [Accessed 20 December 2021].

those articles explain,<sup>11</sup> foundations established in the Channel Islands offer a—

“robust workable model for data governance in practice, as they provide: a comprehensive rulebook; a strong, independent governance body; an inclusive decision-making body; a flexible membership; a trust-enhancing technical and organisational infrastructure; and a well-regulated structure.”

11 Foundations are only one of several types of organisation that might be established in Jersey or Guernsey for data stewardship purposes. Further, the facility quickly to establish an appropriate data organisation is only one of a range of factors that might promote the development of Jersey as a leading jurisdiction for data stewardship services. In the autumn of 2021, Digital Jersey arranged and facilitated a series of workshops, drawing on expertise from a wide range of professionals in the private and public sectors, as well as on the experience of several international experts in data stewardship. The purpose of these workshops was to define and explore Jersey’s options and opportunities to develop its data stewardship offering. The workshops considered the ecosystem of professional services that might support data stewardship and the markets that exist at present or may develop. They also considered the potential to deploy other existing legal structures, including purpose trusts, in the context of data stewardship services. At the time of writing, it is understood that Digital Jersey intends to publish details of the outcomes of these workshops and its proposed next steps in the first quarter of 2022. There may be further opportunities for legal professionals to contribute to the development of Jersey’s strategy in this area thereafter.

## Conclusion

12 This is only a brief introduction to a complex and evolving new market, but hopefully it will assist legal and other professionals to consider how developments in data stewardship might affect their businesses and those of their clients.

13 As the LMWG has observed—

‘the challenges of the twenty-first century demand new data governance models for collectives, governments and organisations

---

<sup>11</sup> The Report notes that both Jersey and Guernsey have similar legislation with respect to the establishment of foundations, the Foundations (Jersey) Law 2009 and Foundations (Guernsey) Law 2012.

that allow data to be shared for individual and public benefit in a responsible way, while managing the harms that may emerge.’<sup>12</sup>

The opportunities for Jersey to provide or facilitate the establishment of such governance models and the steps that might be taken to develop Jersey’s offering in this market will be explored in 2022 and some options are likely to be piloted. The publication of the outcome of Digital Jersey’s 2021 workshops and its proposals will be an important milestone in that process.

*Matthew Berry is a Senior Legal Adviser in the Law Officers’ Department and took part in the recent Digital Jersey workshops. He also collaborated on aspects of the cited articles on data foundations with the authors. All views are his own and should not be taken as the official views of the Law Officers’ Department.*

---

<sup>12</sup> *Op cit*, at 4.