Profiling and automated decision making

The General Data Protection Regulation introduces controls and safeguards relating to decisions that are made by solely automated means, and the profiling of individuals.

Automated decision making involves making a decision solely by automated means without any human involvement.

Profiling is defined as any form of automated processing of personal data to evaluate certain personal aspects relating to an individual, in particular to analyse or predict aspects concerning that individual's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.

Automated decision making and profiling can have beneficial effects for individuals and society. This technology can make complicated processes easier to navigate, it can help us access the information we need, when we need it, and it can help correct errors when things go wrong. However, decisions taken without human intervention also have the potential to discriminate against individuals. The lack of human involvement can lead to unfair decisions being taken, and the GDPR introduces safeguards to protect against this.

Any plans to introduce automated decision making or automated profiling must be agreed with the <u>*Privacy and Data Protection team*</u> *and a* Data Protection Impact Assessment *is likely to be required.*

Categories of profiling and automated decision making

There are three categories of profiling and automated decision making.

You must contact the <u>*Privacy and Data Protection team*</u> *before carrying out any of the following three categories of profiling and automated decision making. A* Data Protection Impact Assessment *must be completed before any profiling or automated decision making involving children.*

1. *General profiling: any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to an individual, in particular to analyse or predict aspects concerning that individual's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.*
   Profiling (without automated decision making) is subject to the rules of the GDPR

governing the processing of personal data. In that sense, it is no different to other types of processing.

2. *Decision-making based profiling: a human makes a decision based on a profile which has been produced by purely automated means. If the human does not have any influence on the result then the decision is still likely to be regarded as a solely automated one. The human intervention must be more than a token gesture, and needs to be taken by a person who has access to enough information, authority and competence to take the decision – if the human role is to "rubber stamp" the automated decision, the process should be considered to be solely automated.*

3. *Solely automated decision making, including profiling: no human involvement in the decision.*

Solely automated decision making, including profiling' is banned under the GDPR if the decision produces legal or similarly significant effects* concerning the data subject or similarly significantly affects the data subject EXCEPT if the decision is:

- *necessary for entering into or performance of a contract between an organisation and the individual;*
- *authorised by law (for example, for the purposes of fraud or tax evasion); or*
- *based on the individual's explicit consent.*

*A legal effect is something that adversely affects someone's legal rights. Similarly significant effects are more difficult to define but would include, for example, automatic refusal of an online credit application, and e-recruiting practices without human intervention.