

# Independent Monitoring Authority chair and members appointments

The Lord Chancellor, the Rt Hon Robert Buckland QC, has appointed Sir Ashley Fox to be the first chair of the Independent Monitoring Authority for the Citizens' Rights Agreements (IMA) for a tenure of 4 years. His appointment commenced on 8 December 2020 and run until 7 December 2024.

Sir Ashley's appointment follows a Justice Select Committee pre-appointment hearing on 24 November and the publication of the Committee's report into the same on 3 December. The Lord Chancellor and Sir Ashley have noted the report's contents and recommendations.

The Lord Chancellor has also made the following Non-Executive Member Appointments.

- Punam Birly has been appointed as non-executive member of the IMA for a 2 year tenure;
- Marcus Killick has been appointed as non-executive member with knowledge about conditions in Gibraltar relating to citizens' rights for a 3 year tenure; and
- Leo O'Reilly has been appointed as non-executive member with knowledge about conditions in Northern Ireland relating to citizens' rights for a 3 year tenure.

The appointees all commenced their tenure on 8 December 2020.

Non-executive appointments to the IMA are not currently regulated by the Commissioner for Public Appointments.

However, the Chair and Members have been appointed following fair and open competitions run in line with the process set out in the Governance Code on Public Appointments.

Further campaigns are currently underway to appoint a member with knowledge of the conditions in Scotland relating to the rights of citizens under the EU Withdrawal Agreement and EEA EFTA Separation Agreement, and a member with knowledge of the conditions in Wales relating to those rights, with the appointments expected to be announced by the end of January and the end of February 2021, respectively.

## **Independent Monitoring Authority for the Citizens' Rights Agreements**

The IMA is a brand-new public body, which has been established under the [EU \(Withdrawal Agreement\) Act 2020 \(EUWAA\)](#). The IMA needs to be operational by the end of 2020. The chair of the IMA will play a crucial role in establishing the IMA's early direction and effectiveness, and in winning the confidence of its stakeholders.

Under the provisions set out in EUWAA, the IMA will have the power to receive complaints, launch inquiries and initiate legal proceedings. The IMA will also have a role in reviewing the effectiveness of the citizens' rights legislative framework, for instance by reviewing draft legislation. The legislation also provides that it is important for the IMA to focus on general or systemic failures in the implementation of the citizens' rights agreements, as well as receiving and investigating individual complaints. The IMA will have to publish guidance on how it will exercise its functions.

## **Biographies**

### **Sir Ashley Fox – Chair of the IMA:**

Sir Ashley is a business consultant providing strategic advice on the European Union. Since 2015 he has been the lay member on the Leadership Nomination Committee of the Royal Institution of Chartered Surveyors. Sir Ashley served as MEP for the South West of England and Gibraltar from 2009 to 2019. He was Leader of the Conservative MEPs from 2014 to 2019. Prior to being elected Sir Ashley practised as a solicitor in Bristol.

### **Punam Birly – Member:**

Punam was a Partner at KPMG LLP (UK) from 2008 – 2020. She was Head of Employment and Immigration within the Tax and Legal Services Practice and the lead on People related Brexit issues. She is an EU/international social security specialist. She is a Solicitor of the Senior Courts of England and Wales and previously worked at Andersen, Deloitte and PwC.

### **Marcus Killick – Member with knowledge about conditions in Gibraltar relating to citizens' rights:**

Marcus qualified as a Barrister at Law (England and Wales), an Attorney at Law (New York), and a Chartered Fellow of the Chartered Institute of Securities and Investment. His current role is Chief Executive Officer of ISOLAS LLP, one of Gibraltar's leading law firms.

### **Leo O'Reilly – Member with knowledge about conditions in Northern Ireland relating to citizens' rights:**

Leo is a Non-Executive Audit and Risk Committee Member of the Office of the Police Ombudsman for Northern Ireland. He was a former civil servant in the Northern Ireland Civil Service with over 27 years' experience as a senior civil servant covering a diverse range of functions and activities across government in both NI and GB. These include over 11 years as the Permanent Secretary of three Northern Ireland departments.

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# NDG announces new Caldicott Principle and guidance on Caldicott Guardians

The National Data Guardian for Health and Social Care (NDG) Dame Fiona Caldicott has today published the [outcomes from a public consultation](#) that she ran to seek views on her intention to:

- revise the existing 7 Caldicott Principles
- introduce a new principle about ensuring there are no surprises for patients and service users about the use of their confidential information
- issue guidance about the role of Caldicott Guardians using her statutory powers

The consultation response contains a revised – and expanded – set of [8 Caldicott Principles](#) and includes a commitment to issue guidance about Caldicott Guardians in 2021.

The Caldicott Principles, first introduced in 1997 and previously amended in 2013, are guidelines applied widely across the field of health and social care information governance to ensure that people's data is kept safe and used appropriately. Caldicott Guardians support the upholding of these principles at an organisational level.

The new principle's purpose is to make clear that patient and service user expectations must be considered and informed when confidential information is used, to ensure 'no surprises' about the handling or sharing of their data. Following feedback from the consultation, the wording of this new, eighth principle is:

## **Principle 8: Inform patients and service users about how their confidential information is used**

**A range of steps should be taken to ensure no surprises for patients and service users, so they can have clear expectations about how and why their confidential information is used, and what choices they have about this. These steps will vary depending on the use: as a minimum, this should include providing accessible, relevant and appropriate information – in some cases, greater engagement will be required.**

Its introduction was prompted by a careful consideration of the role that the legal concept of 'reasonable expectations' should play in shaping the circumstances under which health and care data may be legitimately shared. The NDG does not envisage that this principle will establish reasonable expectations as a legal basis in its own right to meet the duty of confidence. However, given the influence of the Caldicott Principles, she does believe it will helpfully emphasise the perspective of patients and service users in decisions to use and share confidential information.

The consultation response also confirms the NDG's intention to issue guidance using her statutory powers in 2021 about the appointment of Caldicott Guardians for all public bodies within the health and adult social care sector in England, and all organisations which contract with such public bodies to deliver health or adult social care services. The guidance will define the roles and responsibilities of Caldicott Guardians and how they should be supported by their organisations. The guidance will provide flexibility for organisations for which it is not proportionate to appoint a dedicated Caldicott Guardian and will suggest options/models to ensure those organisations can still have a Caldicott function.

Supporting resources will be made available for those who need to appoint a Caldicott Guardian or establish a Caldicott function within their organisations.

This will be the first time that the National Data Guardian has issued statutory guidance using her powers under the [Health and Social Care \(National Data Guardian\) Act 2018](#).

## Notes to editors

The consultation was conducted via a written survey, which received 194 responses, and eight online focus groups involving 88 patients, social care service users and members of the public. These activities were supplemented by engagement with key individuals and organisations from across the health and care system, before and during the consultation period.

A set of six principles was first published as part of [The Caldicott Committee's Report on the Review of Patient-Identifiable Information](#) published in 1997 to serve as good practice guidelines to be applied to the use of confidential information within the NHS. A further principle was added in 2013 as part of [The Information Governance Review](#).

The 1997 review also recommended that a senior person, preferably a health professional, should be nominated in each health organisation to act as a guardian, responsible for safeguarding the confidentiality of patient information. These became known as Caldicott Guardians. Local authorities with adult social care responsibilities have been required to have one since 2002. There are over 18,000 Caldicott Guardians in post today.

The National Data Guardian has published a [blog post](#) on this topic.

For further information contact Jenny Westaway, Head of the Office of the National Data Guardian on [j.westaway@nhs.net](mailto:j.westaway@nhs.net) or 07827 955 604

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# Why Caldicott Principles and Caldicott Guardians are still relevant in 2020

Today we have [published the outcomes of a consultation](#) that we held earlier this year about the Caldicott Principles and the role of Caldicott Guardians. The consultation response contains a revised – and expanded – set of 8 Caldicott Principles. It also confirms our intention to issue guidance in 2021 that will increase the number (and type) of organisations which should appoint a Caldicott Guardian.

I am coming to the end of my term in March as National Data Guardian for Health and Care in England, and also my career in the NHS. In this period of reflection, I look back with some satisfaction that 23 years after their inception, Caldicott Principles and Caldicott Guardians are still considered valuable and useful. It still seems strange to me that they bear my name, as that was definitely not my recommendation or intention.

The principles were introduced in 1997 as part of a [review I led into patient-identifiable information](#), which was motivated by concerns about patient confidentiality at a time of rapidly expanding use of information technology in the service. We proposed six principles based on common sense to safeguard confidentiality.

The same review also introduced Caldicott Guardians in the NHS, and subsequently in local authorities. We thought that all organisations handling patient and service users' health data should have a senior person with a specific responsibility for protecting the confidentiality of that information. Today this role is very well-established; there are now more than 18,000 Caldicott Guardians – and not just in health and care: some organisations in other sectors, such as prisons, police and the armed forces appoint them too.

There has been much change since the role was first established, and we wanted to obtain a clear understanding of people's current views on its value. In particular, the introduction of additional information governance (IG) roles into health and care settings, such as data protection officers (DPOs) and senior information risk owners (SIROs) has changed the landscape. Considering this, we wanted to 'test the temperature': did people on the ground still feel the role was as helpful? And did people feel that patients and service users across a broader range of settings would benefit from the services of Caldicott Guardians?

What we heard was a resounding 'yes'. This reinforced my firm belief that where health and care data is being used, Caldicott Guardians can bring something nuanced and very specific to discussions and decision-making. Their deep understanding of how health and care data is different to other data (in many cases because they are clinicians and care providers themselves) positions them as knowledgeable advocates for patients. Whilst the other IG roles are equally valuable in terms of ensuring that the legality and

technical protections are as they should be, Caldicott Guardians have a different 'flavour' and, rightly, are often referred to as the conscience of their organisations.

I believe that even well-established principles and conventions should be reviewed from time to time. It has been seven years since we last revised the Caldicott Principles by adding a seventh principle to encourage better information sharing, and so this seemed a good time to reconsider them. Many discussions in recent years had led my Panel and me to conclude that the principles would benefit from an addition – a new tenet that would serve as a simple guide for frontline workers making data sharing decisions.

This new principle focuses on ensuring that expectations of patients and care users are considered and met when decisions about data sharing are made. Working with them and the public to ensure that data use aligns with expectations has been a mainstay of my work.

It was this belief, for instance, that led us to develop the proposal for the National Data Opt-out. We listened carefully to what people said they wanted and recommended an opt-out scheme because we heard that an important element of building trust was to give people a real choice about the use of their data.

And only by demonstrating that health and social care can be trusted to be respectful and do the right thing with people's data will we earn the goodwill to use their data.

The roll-out of the National Data Opt-out across health and care organisations is on pause until March. This is so that health and care organisations which had not yet implemented it could concentrate on tackling the pandemic, rather than introducing this change. But the reasons for the opt-out remain as important as ever. I am a keen advocate of data use and have not opted out myself. However, by providing people with a mechanism to do, we show that we uphold the commitment that we made and respect people's decisions.

The remaining months of my term as NDG fall in a period when it will be important for the system to consider how to deal with the emergency measures that were introduced in response to the pandemic. No assumption should be made that what is put in place during a public health crisis will be appropriate when the level of threat to public health recedes. There are many innovations and changes that should be kept. Equally, others do not remain appropriate outside of the context of a pandemic.

For example, to slow the spread of coronavirus, the Government has passed a law that makes failing to isolate when required, or giving false information to contact tracers, a criminal offence. Regulations have been introduced so that NHS Test and Trace may set aside the duty of confidence to share information with police to enforce this law in individual cases. It is vital that we all obey the rules to control the spread of the virus, and I understand that this is the purpose of these newly identified offences. We were glad to see that a memorandum of understanding sets out that minimum

information should be passed to law enforcement, and that no data is passed to the police from the COVID-19 app. Nonetheless, I am concerned that the current arrangement may also have the unintended consequence of reducing people's readiness to seek care, and would not want this to be seen as a precedent for sharing health and care information with the police beyond this pandemic.

Meanwhile, we have also seen a constructive coming together both within and outside the sector as people have joined forces to both manage the pandemic and keep our health and care system operating effectively. In a blog post that I wrote in April, I said how reassuring I had found it to see so many examples of rapid and focussed action and problem solving. This momentum has never slowed, despite the many challenges; this makes me feel extremely proud of – and thankful for – the dedication of those who work in our health and care services.

Over the last few weeks, we have had some wonderful news about vaccine development: a light at the end of the tunnel. This breakthrough gives us some hope that we can now start to think about – and plan for – a time beyond the current crisis. And as we do consider that, and think about what data use should look like in a post coronavirus landscape, we must continue to listen to the public. We have already begun to see [emerging evidence](#) which suggests that people are becoming more knowledgeable about the importance of health and care data, and more accepting of its use. We now have an opportunity to build on this growing awareness. And at this time, transparency will be key to providing the reassurance that earns confidence. We must make a concerted effort to engage with the people whose data we hold before making important decisions about it.

You can read more about our consultation response in [our press release](#)

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## [CMA advises government on new regulatory regime for tech giants](#)

- New regime will proactively shape the behaviour of the most powerful tech firms
- It will ensure consumers and businesses are treated fairly and help to level the playing field for smaller rival tech firms
- Proposals demonstrate the UK's continued leadership in developing a pro-competition regime for digital markets

The CMA has today issued advice to government on the design and implementation of the UK's new pro-competition regime for digital markets.

The advice has been produced by the Digital Markets Taskforce, commissioned by the government in March and led by the Competition and Markets Authority (CMA), working together with Ofcom, the ICO and the FCA.

It outlines a modern regulatory regime fit for the digital age – one that is forward-looking, targeted and enables quick results to harness the full potential of digital markets, driving greater competition and innovation.

If implemented, the new regime will govern the most powerful tech firms – those with 'strategic market status' (SMS) – meaning those with substantial, entrenched market power and where the effects of that market power are particularly widespread or significant. A new 'Digital Markets Unit' (DMU) will ensure the 'rules of the game' are clear up-front, and work with powerful tech firms to ensure they comply with them.

The three key proposed pillars of the regime for SMS firms are:

- A new, legally binding code of conduct, tailored to each firm and to where the evidence demonstrates problems might occur, designed and overseen by the DMU. The code will help to shape the behaviour of powerful digital firms, up front, and govern elements of how they do business with other companies and treat their users. There will be a range of powers available to the DMU to address any concerns, including the potential for significant penalties.
- Pro-competitive interventions, which can be used to address the sources of market power, allow competition to flourish and unlock the potential for transformative innovation by others in the market. An example of such an intervention could be imposing interoperability requirements on tech firms and better enabling consumers to control and share data.
- Enhanced merger rules, which would enable the CMA to apply closer scrutiny to transactions involving SMS firms. This would include it being mandatory to notify the CMA of a transaction, imposing a block on completing a deal until the CMA had investigated, and a change to more cautious legal test when looking at the likelihood of harm to consumers in order to address concerns about historic under-enforcement of mergers involving big tech firms.

[The government announced last week](#) that the DMU would sit within the CMA. The new regime will become part of a wider regulatory framework for digital markets, including the new regime for harmful online content, and data protection laws. The CMA is now working with Ofcom, the ICO and FCA through the [Digital Regulation Cooperation Forum](#), to consider the steps that should be taken to ensure adequate coordination, capability and clarity across all digital regulation.



Following receipt of this advice, the government has committed to consult on proposals for a new pro-competition regime in early 2021 and to legislate to put the DMU on a statutory footing when parliamentary time allows. The taskforce has urged government to move quickly in taking this legislation forward, to take advantage of the clear opportunity for the UK to lead the way in championing a modern pro-competition, pro-innovation regime.

CMA CEO Andrea Coscelli said:

To ensure the UK can continue to enjoy a thriving tech sector, consumers and businesses who rely on tech giants like Google and Facebook should be treated fairly, and competitors should face a level playing field – enabling them to deliver more of the innovative products and services we value so highly.

For that to happen, the UK needs new powers and a new approach. In short, we need a modern regulatory regime that can enable innovation to thrive, while taking swift action to prevent problems.

To meet the new challenges of the digital age, it is essential that regulators work together. In developing these proposals, we have benefited from working alongside Ofcom, the ICO and the FCA.

Information Commissioner, Elizabeth Denham said:

We welcome the publication of the Digital Markets Taskforce Advice and we have been pleased to support the work of the Taskforce. The dominance of a few major players in digital market impacts on people's data protection rights when they use these platforms. Our involvement with the Taskforce reflects the importance of safeguarding these rights and ensuring individuals have greater control over their personal information.

We continue to work closely with the CMA, Ofcom and FCA through the Digital Regulation Cooperation Forum to co-ordinate our approach to the regulatory challenges presented by new digital markets and platforms.

Dame Melanie Dawes, Ofcom Chief Executive, said:

We share the aim of ensuring competition works well in the digital economy, something which is vital to the sectors Ofcom regulates.

We've been pleased to contribute to the Taskforce's work, and we look forward to working with the Government and other regulators to help take this forward.

Nikhil Rathi, Chief Executive of the FCA, said:

We have welcomed the opportunity to work closely with the Digital Markets Taskforce on their recommendations, which are an important step in developing an approach that protects consumers in digital markets. We will be focusing on the implications for financial services.

1. The CMA is the UK's primary competition and consumer authority. It is an independent non-ministerial government department with responsibility for carrying out investigations into mergers, markets and the regulated industries and enforcing competition and consumer law.
2. In March, the CMA was asked by government to lead a Digital Markets Taskforce, comprising CMA, Ofcom and the Information Commissioner's Office to advise government on how a new pro-competition approach should be designed for digital markets. Find out more in the [Terms of Reference](#) for this work.
3. Media queries should be directed to: [press@cma.gov.uk](mailto:press@cma.gov.uk) or 020 3738 6460.

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## **New Homes England statistics show overall housing starts down, reflecting the impact of Covid-19 on housebuilding**

Housing programmes delivered by Homes England saw an overall decrease in starts and completions in the first half of 2020-21 compared to the same period last year, according to official statistics released today (8 December).

There were 11,313 new houses started on site and 11,358 homes completed through programmes managed by Homes England between 1 April and 30 September 2020. Starts on site were down by 38 per cent and completions were down 25 per cent, compared with the same period last year.

### **The effects of lockdown and social distancing**

The national lockdown introduced on 16 March 2020 resulted in Homes England's

delivery partners immediately pausing on some sites and implementing social distancing on others, with partners reporting anywhere between 60% and 100% of employees and contractors not able to be onsite.

The number of affordable housing starts made up over three quarters (79 per cent) of total starts on site, although the 8,897 starts represented a decrease of 32 per cent on last year. The number of affordable starts in 2020-21 was the lowest since 2017-18 and while much of this can be attributed to Covid-19, the Shared Ownership Affordable Homes Programme (SOAHP) 2016-21 entered its final year and lower levels of affordable starts were expected.

In anticipation of the impact of lockdown on housing delivery, Homes England worked with government to secure an extension to the SOAHP. The agreement the housing agency secured focused on providing extensions on delivery dates and re-profiling budgets, meaning its delivery partners would have certainty on the grant funding underpinning their current grant-funded delivery pipeline. It also meant they did not bear any additional financial risk, which avoided a knock-on effect on outputs, SME contractors and employment.

### **Affordable homes by tenure**

Of the affordable homes started, 3,295 were for Affordable Rent – a 38 per cent decrease on the 5,340 started last year. A further 2,768 were for Intermediate Affordable Housing schemes (including Shared Ownership and Rent to Buy), representing a 34 per cent decrease on the same period last year. The number of Social Rent starts was 541, down by 26 per cent on 734 last year.

A remaining 2,293 affordable homes started with tenure to be confirmed, a decrease of 21 per cent on 2,896 in 2019-20.

Nick Walkley, Chief Executive of Homes England, said:

“As anticipated, Covid-19 had a significant impact on the construction industry in the first half of this year.

“Homes England has been working closely with delivery partners and colleagues in government to support the sector to build back its capacity. Confirmation of £12bn of funding through the Affordable Homes Programme gives confidence to the sector to support delivery over the next five years.

“By working with our Strategic Partners and the wider sector, we can ensure that the £7.5bn allocation Homes England received, along with the additional funding announced in the recent Spending Review, helps to stimulate the sector and ultimately give our delivery partners the confidence they need to invest in new homes.

“We are encouraged by the latest economic data showing that the construction sector is recovering and growing strongly, with housebuilding performing particularly well, and hope that the positive news on the development of several effective vaccines will aid further recovery.”

Homes England programmes are funded by central government to enable private

registered providers, house builders, community groups and local authorities to deliver affordable housing.

Market starts – housing built for sale at market rates – were down by 56 per cent on the previous year. Fluctuations in the number of market starts and completions between periods reflects the nature of the programmes, with different types and sizes of sites starting at different times with varying build-out rates.

These latest figures show the lowest level of starts since the first six months of 2012-13 and can be attributed to a slow-down in housebuilding activity, caused by the Covid-19 pandemic. Total starts for the same period in 2019-20 were 18,221 with 15,046 completions.

### **The impact of the pandemic on completions**

In late-March, construction insight data showed that almost 1,900 schemes had been closed or delayed, directly affecting the completion of nearly 240,000 new homes.

As construction workers returned to sites in April and May, social distancing requirements continued to mean fewer staff and contractors on site. Partners reported reduced capacity on site and sites being mothballed increased the average build-out time by three to eight months, delaying completions and starts on site.

Levels of completions were the lowest since the first six months of 2015-16 and can also be attributed to the housebuilding slow-down caused by the pandemic. Though some sites were able to re-open relatively quickly after the first lockdown, backlogs in the supply chain meant that some schemes faced delays. Partners reported shortages of plasterboard, bricks, mortar and logistical challenges which caused bottlenecks as supply chains caught up with demand.

In total, 7,612 affordable homes were completed, a decrease of 26 per cent on last year. Completions across most affordable tenures were down on last year, except for Social Rent, which saw an increase of 10 per cent. This increase follows an upward trend seen over the last two years and reflects the funding focus shifting from intermediate tenures in the early years of the 2016-21 SOAHP, with grant funding opening up for Affordable and Social Rent in recent years.

Ends

Notes to editor

National housing statistics are published twice a year showing half and full year starts and completions as part of planned national statistical releases. The next release is full year starts and completions, which are due to be published in July 2021. Housing figures cannot be provided outside of these official releases.

This release presents the housing starts on site and housing completions

delivered by Homes England between 1 April 2020 and 30 September 2020 in England excluding London (for both the current and historical series), with the exception of the Build to Rent (BTR), Builders Finance Fund (now called The Home Building Fund – Short Term Fund) and Get Britain Building programmes which are administered by Homes England on behalf of the Greater London Authority (GLA).

Since April 2012, the Mayor of London has had oversight of strategic housing, regeneration and economic development in London.

The list of programmes included in these totals are detailed in the official housing statistics report, which can be found [here](#).

“Affordable Tenure TBC” refers to units that have reached the start on site milestone but where the tenure of these units has not yet been specified. This was introduced as a flexibility for Strategic Partnerships to enable them to determine tenure close to or at the point of completion. These starts will be restated under their specified tenure headings in future national statistics updates once the tenure has been established at completion.

Homes England also manages the Help to Buy equity loan scheme in England (including in London on behalf of the GLA). However, the completions are reported by the Department for Housing, Communities and Local Government (MHCLG) and, therefore, are excluded from these statistics.