



ADVISORY PANEL ON PUBLIC SECTOR INFORMATION

Date: Thursday 16 September 2010

Time: 11:00am-4:35pm

Venue: Ministry of Justice

Chair: Professor David Rhind CBE

Deputy Chair: Peter Wienand

Secretariat: Grazia Zaffuto

Attendees:

Members:

Neil Ackroyd, Representative Member, Trading Funds

Mike Batty, Expert Member

Stefan Carlyle, Representative Member, Information Providers

Keith Dugmore, Expert Member

John Gray, Expert Member

David Lammey, Representative Member, Northern Ireland

Hector MacQueen, Representative Member, Scotland

Hilary Newiss, Expert Member

Michael Nicholson, Expert Member

Shane O'Neill, Expert Member

Bill Oates, Representative Member, Wales

John Ponting, Expert Member

Patricia Seex, Contributing Member

Prabhat Vaze, Expert Member

Phillip Webb, Expert Member

Non-members:

Carol Tullo, Director of Information Policy and Services, The National Archives

Peter Hills-Jones, Head of Chief Executive's Office, The National Archives

Marcia Jackson, Head of Standards, The National Archives

Howard Davies, Standards Manager, The National Archives

Trish Humphries, Business Support, The National Archives

Graham Smith, Deputy Information Commissioner, ICO

Charlie Villar, Director, Shareholder Executive

Richard Stirling, Head of Strategy and data.gov.uk, Cabinet Office

Sara Marshall, Head of Secretariat, Transparency Board, Cabinet Office

1. Welcome, introductions and apologies

1.1 The Chair welcomed members to the 28th meeting of APPSI.

1.2 The Chair welcomed Peter Hills-Jones, the APPSI Secretariat's new line manager, who is Head of the Chief Executive's Office at The National Archives and Trish Humphries, Business Support Officer in the Chief Executive's Office at The National Archives. The Chair informed attendees that at lunchtime they would be joined by Graham Smith, Deputy Information Commissioner, who was scheduled to present in the afternoon on 'The Government's Transparency Agenda and the ICO' and Charlie Villar from the Shareholder Executive who would participate in the discussion on the 'importance of defining public task as part of the Transparency Agenda' along with Richard Stirling, Head of Strategy and data.gov.uk, Cabinet Office and Sara Marshall, Head of Secretariat, Transparency Board, Cabinet Office.

1.3 Apologies of absence were received from Chris Corbin, Michael Jennings and Jim Wretham.

2. Minutes and actions of the last meeting

2.1 The minutes of the last meeting on 22 July 2010 were approved as a correct record; and it was noted that the following two actions from the meeting on 17 May 2010 still require completion:

- The APPSI Secretariat would draft a letter on behalf of APPSI to the relevant team at the Cabinet Office urging them to revise their guidelines for the future, as the system of regulation during an election period should be specifically directed towards government activity that could call into question political impartiality.

ACTION: The Secretariat agreed to write to the Cabinet Office before the next APPSI meeting.

- The Chair of APPSI and APPSI's Local Government representative will put together an 'issues and solutions' paper that should be of interest for any incoming government. The delay in sending this resulted largely from the great uncertainty of what message would be effective whilst the new government was sorting out what it wished to pursue.

The Chair of APPSI said that the moment had passed and it was no longer appropriate to send the local government 'issues and solutions' paper to Ministers.

3. Update from the National Archives

The Director of Information Policy and Services, The National Archives, provided APPSI with the following update:

European Commission PSI Directive consultation

3.1 The European Commission, on 9 September 2010, launched an online public consultation on the PSI Directive. The National Archives will be leading the UK government's response to this consultation, which closes on 30 November 2010. This now gives a clearer timeline for the review of the UK PSI Annual Report that was held from July 2010 publication.

PSI Annual Report

3.2 The aim would be to publish the PSI Annual Report before the PSI Directive consultation closes and up to date to the end of September 2010 in conjunction with the launch of the Open Government Licence. The PSI Annual Report will also provide solid evidence of the UK activity in response to the PSI Directive consultation questions.

legislation.gov.uk

3.3 legislation.gov.uk, the official legislation service, was launched on 29 July 2010. legislation.gov.uk, combines UK legislation services as enacted from the existing www.opsi.gov.uk website with the Statute Law Database website (www.statutelaw.gov.uk), which provides updated legislation. Migration from the two existing websites is about 50% complete and the old sites will be closed once successful migration to www.legislation.gov.uk is complete. Unique visitors in week 7 were averaging 100,500 cf. 250,000 on the old sites in the week before the launch, so good progress is being made.

Launch of RE-users RSS Feed

3.4 The Re-users RSS feed went live on 11 August 2010 at <http://www.nationalarchives.gov.uk/rss/psi-updates.xml> where it is announced that the Standards team in The National Archives will be conducting an Information Fair Trader Scheme (IFTS) re-verification of the Met Office from 20-23 September 2010 and the British Geological Survey (BGS) has been re-accredited to the IFTS. The report on the re-verification of BGS against the IFTS principles has been published and can be found at <http://www.nationalarchives.gov.uk/information-management/ifts/members.htm>.

Property searches

3.5 The Ministry of Justice's Statutory Instrument stipulating that the withdrawal of the fee for personal searches was signed and laid before Parliament on 27 July 2010. Letters from DEFRA to all local authority chief executives in England and Wales followed the same day, and The National Archives' generic guidance also went live online the same day. LGA and TNA officials continue to discuss how best to advise local councils.

Transparency Board papers

3.6 Update on the new UK Open Government Licence, to be launched on 30 September 2010. It was presented to the Transparency Board meeting on 15 September 2010 and will also be discussed later (at this APPSI meeting) and at Location Council meeting on 16 September. [Afternote: the Open Government Licence can be accessed at: <http://www.nationalarchives.gov.uk/doc/open-government-licence/open-government-licence.htm>. To support the UK Open Government Licence, The National Archives has developed the [UK Government Licensing Framework](#) which sets out the Government's overall policy on licensing and the re-use of public sector information]. Discussion on public task as it relates to information trading is also on the agenda later.

4. 2010 survey of the Local Government sector within England & Wales on the trading of land and property information

Speaker: John Gray, APPSI member

4.1 Since 2006, following the introduction of the European Directive on the Re-Use of Public Sector Information (SI.2115/2005), John Gray has, on behalf of PSI Consulting Ltd, conducted annual surveys of the Local Government sector within England & Wales concentrating on the trading of land and property information. The surveys have sought to gauge actual compliance against the stated aims of the European Directive on the re-use of Public Sector Information and the related statutes and initiatives which impact directly on the Local Authority sector.

4.2 The speaker said that within the UK property and information marketplace, there has been fundamental change in the deregulation of previously standardised and accepted fees and an increase in the ability of Local Authorities to use charging powers to levy radical price increases. These changes in charging powers have all occurred since 2005 and all appear to contradict the European Directive on the Re-Use of Public Sector Information and the Environmental Information Regulations 2004.

4.3 It also appears contradictory of joined up policy making that, whilst Government bodies such as OPSI, part of The National Archives, and APPSI are striving to promote an open information interface and active compliance with the PSI Re-use Regulations, other government departments such as Communities and Local Government (to whom a number of the charging powers can be traced) have been seeking to facilitate the introduction of charging powers which are in direct opposition to prevailing information policies.

4.4 The effect on the private sector has been one of confusion with regards charging policy and the public sector has also shown a lack of consistent understanding as to what can and what cannot be charged for and the means by which charges can and should be levied. The approach taken by Local Authorities has largely been to accept and continue charging practices dating back many years. The result of this confusion in the right to levy charges can be costly to individual customers and the private sector alike.

4.5 Evidence suggests that charges for property searches since January 2005 may have to be refunded to the very companies who were charged those fees. Quite aside from the ability of Local Authorities to manage a refund and payback scheme which will total millions of revenue and which will impact significantly upon their budgets, it seems that they have also lost the ability to make (what the speaker argued) were widely acceptable charges at a time when they are facing unparalleled cuts along with many other public sector organisations.

4.6 Property Search Companies are now enjoying free access to information providing it is accessed in person subject to the EIR Regulations. The Local Authorities however are continuing to cost out the information at an average £22.00 for compilation and preparation within their own reporting framework. Remote access to information incurs a LLCI fee, which varies across 386 District Authorities from as little as £5 to as much as £68.

4.7 In conclusion, the speaker said that the survey found:

- Lack of clear cohesion in policy making
- Contradictory legislative enactments
- Lack of joined up governance
- Differing agendas between various government departments
- Severe potential cost implications to local authorities
- Increased costs to the tax payer.

4.8 The following key points were made during the discussion:

- It was argued that charging by different local governments at different rates for property search information causes unfairness and confusion. A definition of ‘Public Task’ and best practice guidance is likely to be needed to provide clarity and a level playing field.
- Confusion arises from the tension between access and re-use of information. The law stipulates that access to information is free but organisations can charge for the re-use of information. Some local authorities recover the costs of the time, resources and expense incurred in putting the information together through charges. It is unclear whether the different charges reflect different cost levels due to different efficiencies of process or profit-making in some cases.
- There is no appropriate forum to consider the charging and legal tensions around access and re-use. It might be appropriate for the government’s Transparency Board to consider this issue at a higher level, taking into account the need for consensus between government departments. Indeed, if the government’s ‘Right to Data’ policy comes into effect, there will be a need to review the distinction between the access and re-use of PSI.
- The Local Government Association (LGA) cannot take a leading role in resolving the property search charging policy because local authorities own their own copyright and therefore LGA does not have the power to define charging rules to local authorities.
- Property search policy sits with Defra but the charges are set by Land Registry and the Ministry of Justice. The increase in the property search fee from £11 to £22 came into effect in order to allow local authorities to invest in their systems.
- APPSI’s economics expert said that the consumer is unlikely to be concerned with the level of variation in the property search fee but it is clear that the right pricing structures have not been set and, as a consequence, the larger property search companies can ask for their money back.
- APPSI’s Northern Ireland Representative said that in Northern Ireland, the Department of Environment (operating within central government), carries out a historical search, which is available for inspection for free for property search information up to 2002. Northern Ireland is moving towards a system that has no charges, on the premise that the tax payer has already paid for the information and does not need to pay again.
- One member suggested that the Chartered Institute of Public Finance and Accountancy (CIPFA), which undertakes a lot of work on benchmarking, could provide a steer towards achieving a standardised and fair charging regime. The speaker said that CIPFA was engaged with this issue at one stage. The Chair of APPSI said that the Audit Commission is probably the most appropriate organisation to undertaking a benchmarking exercise (though it will soon cease to exist).

4.9 APPSI members welcomed the written update from APPSI’s Local Government Representative who could not be at the meeting. APPSI’s Wales Representative queried one element in paragraph 10 in the update, which he said he would raise outside the meeting.

5. The Government’s Transparency Agenda and the ICO

Speaker: Graham Smith, Deputy Information Commissioner

5.1 Graham Smith was appointed Deputy Information Commissioner in 2001 when the functions of the former Data Protection Commissioner were extended to cover Freedom of Information. Prior to that Graham enjoyed a career in local government, working for four local authorities over a 20-year period. He joined the Information Commissioner's Office from Oldham MBC, where he was Assistant Chief Executive and Solicitor to the Council. One of two Deputy Commissioners, Graham has lead responsibility for promoting and enforcing Freedom of Information.

5.2 The right under the Freedom of Information Act (FOI Act) and the Environmental Information Regulations (EIR) to request information held by public authorities came into force in January 2005. The Act and the EIR allows individuals and organisations to access recorded information (such as e-mails, meeting minutes, research or reports) held by public authorities in England, Northern Ireland and Wales. However in the last ten years, the information management agenda has moved at a considerable pace. Access to government information under FOI has been exploited in order to expose the workings of government and reveal how decisions have been made. The re-use of public sector information has aided decision-making and enabled innovative solutions within the public and private sectors. There is now a growing expectation of transparency of public sector information; and in light of the widely publicised security breaches, the privacy agenda has greater impact on the public consciousness.

5.3 The speaker said that the government's Transparency Agenda needs clearer articulation. At present, it is unclear what is meant by a new 'Right to Data' and that much of the focus has been on the release of datasets in re-usable formats, the release of senior civil servants' salaries and central and local government expenditure. He said that, there might be unintended consequences or interests that might be prejudiced from the release of information about expenditure. The Government also wants to extend the scope of the FOI Act to increase transparency and is currently considering how it can achieve this aim. Government may find that existing delivery mechanisms may be sufficient (with minor changes).

5.4 There are two types of access to public sector information under FOI:

- **Proactive disclosure** through a publication scheme, which is a commitment by a public authority to make certain information available, and a guide to how that information can be obtained.
- **Disclosure on request** where all public authorities and companies wholly owned by public authorities have obligations to follow a number of set procedures in order to answer requests for information.

5.5 If a public authority has refused to provide information because they consider that an exemption is engaged, the requester can complain to the ICO. The Commissioner expects the complainants to have exhausted the public authority's internal complaints procedures before submitting a complaint. This is known as an 'internal review'. If the complainant is dissatisfied with the response to the internal review, they can then make a formal complaint to the ICO. When a complaint is made against a public authority, the ICO investigates the facts behind the complaint and may then issue a decision notice. This is the Commissioner's final view on whether or not the public authority has complied with the FOI Act or the Environmental Information Regulations. There is also a First-tier Tribunal (Information Rights), which was formerly the Information Tribunal, which hears appeals from notices issued by the Information Commissioner under the FOI Act. Five years on, the speaker argued, FOI works and is a success.

5.6 FOI and the re-use of PSI are not integrated regimes. FOI is not designed to deliver the re-use of PSI but where information has been released under FOI attempts have been made by some public authorities to put restrictions on re-use by invoking copyright and/or applying conditions on the further use of that information. Sometimes FOI requesters specifically ask for information in a particular format because their intention is to re-use the information, but in the most part, information requested under FOI is for personal use, media and politically driven or for competitive use. FOI is not the primary vehicle for delivering the re-use agenda and the wider transparency agenda is not dependent on the FOI Act.

5.7 The ICO's priorities are:

- More emphasis on proactive disclosure of information through the use of publication schemes
- The importance of timeliness and positive engagement between public authorities and those requesting the information
- A tougher approach to enforcement, which will ensure that requests are routinely responded to in a timely way
- Proper protection of personal information so there is potential for personal data to be released in appropriate circumstances and with the necessary safeguards
- Tackling issues around anonymisation and identification of information that is released under FOI to ensure that personal information of individuals is protected.

5.8 The following key points were made during the discussion:

- APPSI's deputy chairman referred to the earlier discussion of property searches to highlight the tension between access and re-use of PSI. The speaker said that with regards property search information, the issue should be dealt with through the EIR, which is the responsibility of Defra.
- The speaker was asked whether the UK would sign up to the Europe Convention on Access to Official Documents. He said that the UK's FOI Act complies with most European principles on access to information but each member state, including the UK, has its own constitutional differences which will make it difficult to follow a European regime. For instance, the Slovenian Commissioner has responsibility for both the access and re-use of public sector information. In comparison to other countries, the UK provides a regime for FOI that is among the most open and rigorous, and in some areas, goes further than the standards of the Convention.
- APPSI's Wales representative asked whether the ICO would issue guidance on proactive disclosure of PSI. The speaker confirmed that the model publication scheme serves as the guidance for proactive disclosure. This will work in conjunction with existing enforcement measures which stipulate that failure to publish information promptly in accordance with the authority's publication scheme will lead to intervention by the ICO.
- One member commented that since the FOI Act was introduced, there has been substantial initial investment and on-going annual cost in handling requests but it is unlikely that proactive disclosure will significantly reduce the burden of requests.

6. The importance of defining public task as part of the Transparency Agenda

Leading the discussion: Sara Marshall, Head of Transparency Board Secretariat, Richard Stirling, Head of Strategy and data.gov.uk, Charlie Villar, Director, Shareholder Executive

6.1 The Transparency Board is acting on commitments made in the Coalition Agreement to oversee the release of key government datasets which will enable people to hold politicians and public bodies to account, as set out in the Prime Minister's letter to departments, dated 31 May 2010, on plans to open up government information at: <http://www.number10.gov.uk/news/statements-and-articles/2010/05/letter-to-government-departments-on-opening-up-data-51204>.

6.2 The Transparency Board is responsible for setting open data standards across the public sector and developing the legal 'Right to Data'. The Board is chaired by Francis Maude, Minister for the Cabinet Office and members include leading experts and advocates on transparency and open data: Sir Tim Berners-Lee, inventor of the World Wide Web, Professor Nigel Shadbolt, from the University of Southampton, and Tom Steinberg, founder of mysociety.

6.3 The Board's third meeting on 15 September 2010 focused on a short-term agenda to tackle the complexities and challenges of Trading Funds. In the long-term the Board seeks to address the challenge arising from the different price elasticities of different data. The Board is considering whether there are parts of data which would generate greater benefit if they were made available free of charge as well as the long term need to define public task of public sector bodies.

6.4 The invited participants leading the discussion were keen to hear how APPSI could develop the Transparency Board's thinking. The Chair of APPSI said that APPSI aimed to be constructive and supportive in providing its views to the Transparency Board.

6.5 The following key points were made during the discussion:

- The PSI policy considerations should not simply focus on Trading Funds, as government needs to take into account local authorities and other public sector organisations. The Transparency Board Secretariat said that local government data was high on the Transparency Board's agenda and a focus for discussion at the Transparency Board meeting on 15 September.
- It will satisfy both the private and public sectors if public task is defined more explicitly and if there is clear leadership in this area. Who is really in charge of PSI policy? Who will decide the solutions and who will implement them?
- The discussion paper on public task is a useful paper because it sets out the inherent confusions and contradictions that exist from not having a clear definition of public task for different bodies. In order to achieve fairness and transparency, a number of complexities need to be unravelled e.g. what is meant by raw data and value-added data, or refined and unrefined data (where many 'grey areas' exist).
- The definition and principles of public task should be open to challenge through a robust framework that involves meaningful consultation with stakeholders.
- It was contended that the public task discussion is a philosophical discussion emanating from EU legislation. The discussion paper on public task sets out a possible approach to defining a public task in an environment where interests are pulling in different directions, which suggests that the issue is one of data governance.
- The open data model requires long-term investment and maintenance, where issues such as public task, licensing and charging, need to be resolved separately.
- It's important that the Transparency Board considers the demand from the public and industry rather than just contentions from the existing government suppliers of information. The commercial end users are concerned about data quality, accuracy and ease of access rather than where the data comes from.
- Before commissioning new studies on data value, government should review previous studies in this area. Government should also look at research and initiatives in related fields in order to test assumptions and reach a robust decision.
- APPSI's Northern Ireland Representative asked the Transparency Board Secretariat if the Board is seeking to extend its agenda to the devolved administrations. The answer was 'yes' and that officials and then Ministers would be contacted.
- Government should consider why there is little investment from private companies in PSI. One reason is the uncertainty of government's intentions – is there really going to be a level playing field?
- The tension between access and re-use of public sector information also contributes to the lack of private investment in government data. Government needs to provide greater support to individuals/organisations who deliver data-based solutions to citizens.
- The split between free data and non free data is a thorny issue that needs to be resolved. If taxpayers have already paid for the data, why should they pay for it again? The distinction between charged and uncharged OS data for instance is based on one set of pragmatic considerations, notably the number and nature of existing and potential customers and how much government is prepared to pay.

- It's important to focus on the practical and pragmatic solutions rather than come up with new ideas. Lack of clarity drives inefficiencies so what is required is an investment model that generates demand in PSI.
- Government also needs to consider the bigger issues such as the role of government in the information economy, beyond the transparency agenda. Government should ask itself what it wants to achieve and what success would look like. What is the government's vision?

6.6 The Chair of APPSI concluded that the number of different views expressed by the Panel reflected the complexity of the issues and 'free debate' but pointed out that APPSI would welcome the opportunity to be involved in creating a robust process for defining public task and developing the government's longer-term vision, strategy and priorities on open data.

7. APPSI Updates

News from the Minister

7.1 The APPSI Secretariat circulated to APPSI members a copy of Lord McNally's response to the Chair of APPSI's letter dated 6 July 2010. The Minister suggested that he and the Chair of APPSI meet in the near future.

7.2 **ACTION:** The APPSI Secretariat will inform the Panel when a date for this meeting is fixed.

PSI in the devolved administrations

Wales

7.3 A programme of work has been initiated to explore the potential for a common platform for the publication of PSI from across the spectrum of Welsh public services. The scope of this PSI platform (provision entitled "Data Wales") could include the delivery of statistics, geography and public sector performance information. The work of the data.gov.uk team and the Transparency Board is guiding much of the thinking, and the initial set of activities is to understand what solutions already exist in the market that would satisfy the business requirements identified so far.

7.4 The launch of the Natural Ecosystem Framework consultation on 15th September 2010 included a workshop on data sharing between environment and biodiversity focussed organisations. As well as celebrating a number of successes, this workshop also identified a number of inefficiencies in the availability and exchange of environment and biodiversity-related PSI in Wales. It is hoped that the Natural Ecosystems Framework approach can be used as a platform for improvements to the current arrangements.

Scotland

7.5 APPSI's Scotland Representative said that there has been a shift of focus in the Scottish government towards the Comprehensive Spending Review, which means that the policy on public sector information has been put on hold and is unlikely to resurface until after the Scottish elections in May 2011. For this reason, he suggested that APPSI Seminar on 6 December 2010 should include a session on the outcomes of the Comprehensive Spending Review, which will invite contributions from the devolved administrations.

7.6 APPSI's Scotland Representative informed members that Enterprise Minister Jim Mather has asked the General Register Office for Scotland, National Archives of Scotland and Registers of

Scotland to look at whether an amalgamation would save taxpayers' cash. The bodies, which have nearly 2,000 people on their payrolls, have been given until mid-November to come up with possible ideas on how they could work together and save funds.

Northern Ireland

7.7 APPSI's Northern Ireland Representative said that he was due to present to the Northern Ireland Permanent Secretaries' Group on Friday 8 October 2010 on the open data agenda and the need to progress the re-use of PSI in Northern Ireland. While he was hopeful that there would be a positive response, the current financial climate and the forthcoming Assembly elections would undoubtedly present significant challenges to progress.

PSI Directive Consultation & update on European PSI

7.8 The Panel welcomed the written update from APPSI's European Experts on PSI developments from the period 19 July 2010 to 2 September 2010.

7.9 **ACTION:** The Panel agreed to respond to the European PSI Directive Consultation. The APPSI Secretariat agreed to work with APPSI's PSI expert in putting together a draft response to the consultation and circulating it to members for comment.

8. AOB

8.1 **ACTION:** APPSI's statistical expert agreed to keep the Panel up to date on developments with Royal Mail and the Postal Address File.