Information Law and Policy Centre round-table meeting on open justice and open data

23rd May 2016

Summary Notes

NB: to allow a free discussion, these notes do not attribute specific remarks. Participants included representatives from organisations in the fields of open data, justice research and campaigning, journalism and law. The meeting discussed a variety of court data including, but not restricted to, court lists, results, written judgments and reporting restrictions. It does not offer a full account of the issues associated with open justice and open data but further resources can be supplied on request.

Background to the Open Government agenda

The British government is one of the founding members of the Open Government Partnership which was set up in 2011. The partnership provides a platform for domestic reformers around the world committed to making their governments more accountable, open and responsive. Each nation is committed to producing a national action plan for more open government every two years. The Open Government Civil Society Network helps identify and secure government commitments for inclusion in the action plan. Open justice and more accessible courts data is one of the areas which has been suggested as a possible area for reform.

General current problems with courts data

Participants identified significant problems with access to courts data and a lack of transparency within the justice system. Court proceedings are not collated in a centralised records structure and any capturing of court activity was regarded as piecemeal and often defective. The documentation of the proceedings of magistrates' courts was identified as particularly problematic. The accountability of magistrates' courts has also been affected by significant cuts to local journalism. Participants from outside the justice system and even those working within the legal profession explained that it could be exceptionally difficult to access relevant court data from all different types of costs. Obstacles included expense and time. Transcripts, for example, are generally provided by private transcription companies and are prohibitively expensive for specialists or members of the public.[1] Acquiring publicly available court documents often necessitates a physical visit to court which could prohibit access by court reporters and visitors with disabilities, or those without the flexibility or resource to travel to court during working hours.

Where courts data is being made publicly available general concerns were expressed about the potential harm caused by providing public access to personal details. More specific problems were also identified. Courts data that is produced and made available is often not machine-readable and produced in formats (e.g. PDF) which mean the information has to be sifted through manually. Participants also stated that they had encountered mistaken release of some data in cases subject to reporting restrictions.

It was felt that in the past the Ministry of Justice (MoJ) and the Judiciary has not always sought external help from academia, not-for-profit and commercial enterprises to address the resourcing and technical challenge of improving court records, but that more recently attitudes were changing. A recent MoJ hackathon was cited as an example of where departmental officials had made sample datasets available to interested parties. There are, however, many private corporations involved in

[1] See: http://thejusticegap.com/2016/01/12251/

the current control of courts data (e.g. transcription services). Some participants expressed concern about the nature of these arrangements, arguing for more transparency about such arrangements and urging greater consideration of non-commercial collection and publication of data.

Issue 1: To whom should courts data be made available?

Participants reached a consensus that improving court data collection, processing and archiving for use within the court system itself was an important social good. Improving court recording, access to courts records and providing those within the legal system with searchable databases were identified as important reforms. There were concerns that the MoJ might not have the technical expertise or sufficient financial resources to adequately address the challenge and that the ongoing wait for a new computer system was delaying progress in this area.

It was also agreed that data should be made available to relevant parties as a means of scrutinising the justice system in the public interest (as opposed to those who stand accused within the system) and that more information should be made more easily publicly available. The question of exactly who might have access to such data was not directly discussed by participants, but was an issue which was implicit in a number of important points made in the debate. It was generally agreed that courts data might be made available to academics performing legal research. Journalists also assumed a right to access courts data to accurately report trials (as they have done in the past) although participants acknowledged the potentially damaging impact of misuse of information by journalists and other members of the public. The category of 'journalist' has also become problematized by the blurring of the professional identity of a 'journalist' in an age when so many individuals have access to the means of publication via the internet. More generally, attempting to delimit who should have access to data is problematic in itself as many other actors such as NGOs, charities, campaigners or private individuals might have legitimate public interest uses for the courts data. Making all the data fully publicly available, however, might limit its usefulness for certain 'specialists' if identifying information has to be removed. Having a two (or other multiple) tier data system of aggregated data and identifiable data raises questions about who has access to which tier.

Issue 2: What courts data might be made more easily publicly available?

This issue was primarily framed in the discussion around the key concern of identifying or anonymising participants in court cases. It is in this respect that the area of courts data perhaps represents a particularly challenging case in the broader context of the open government initiative. It was noted that it was unusual that including identifying personal data might be considered as a possibility that would have any particular public interest value. (In health data, for example, there is no particularly strong public interest argument in identifying individuals). From a journalistic perspective, however, the identification of individuals in court cases is important from the philosophical and democratic principles of open justice and holding power to account, the professional ideal of accurate reporting, and the legal desire to avoid defamation cases through misidentification. Nevertheless, not publicly naming certain participants in certain court cases (family, sexual offences etc.) is already an established legal principle and accepted journalistic practice.

Concerns were expressed that providing the public with fully searchable online databases – for example – might cause undue harm particularly to vulnerable individuals such as children or rehabilitated offenders. The Rehabilitation of Offenders Act means there are obvious potential problems with naming offenders whose convictions have been spent. More generally, however, it was felt by some participants that naming individuals and including their addresses was a concern in

the context of a 'punitive world' where the stigma of being accused and investigated for offences could be significant even if the individual was subsequently acquitted. There was also some discussion about whether individual judges and magistrates should be named as the data could be used to rank them by various measures in the way that surgeons have their death rates published.

Anonymising courts data is apparently possible but potentially problematic. It was suggested that in Romania five million court decisions have recently been published online using software which automatically anonymised the parties involved. Although such systems can be used to remove particular identifiers, the risk of revealing identities from court case details by triangulating them with other open source information remains a possibility. During the discussion, it was claimed that reverse identifying individuals was nearly always possible and concern was expressed that this might still be a potential problem with aggregated anonymised data. It was also suggested, however, that re-identifying individuals could be made so time-consuming as to not be worth anybody's time. More generally, the potential risks of re-identifying individuals might have to be weighed against broader societal gains made possible by making the data more publicly accessible. Indeed, at the opposite end of the spectrum, removing so much detail from court cases in an attempt to protect individual identities might render any dataset much less useful.

Issue 3: How might courts data be made more publicly accessible or kept publicly accessible?

Beyond the Ministry of Justice itself, participants described both opportunities and concerns in regard to the potential role of commercial enterprises in making courts data publicly available. From a positive perspective, making the data open to competitive and creative companies might lead to innovation which would benefit the public in the same way that opening up transport data in London led to innovative journey planning mobile apps. It was also suggested that offering efficiency savings and innovation, as opposed to increased transparency, might be the best way to "sell" the release of open data to the Ministry of Justice. In contrast, some participants criticised the privatisation of criminal records in Sweden and the monetisation of courts data by companies such as LexisNexis and Trust Online. There were also concerns about the operation of privatised services in other areas of government.

Postscript, June 2016: Suggestions for going forward

During the meeting suggestions were made for possible ways forward, but the group did not try and form recommendations as such. There is an obvious opportunity for members of the meeting and other relevant stakeholders to engage with the Open Government Partnership, the Cabinet Office and the Ministry of Justice. While it seems likely that government policy priorities and planned timescales might change in view of the uncertain post-referendum political climate, open data and courts data will remain an issue for any future government – inside or outside the EU. The authors of this summary and postscript suggest, therefore, the following actions (but should not be understood as necessarily endorsed by participants at the meeting):

- Members of this group and other parties to take up opportunities to engage with OGP/OGP Civil Society Network/MoJ/HMCTS/Cabinet Office, to highlight areas of concern and opportunity with regard to the processing and publication of open data. Suggested points to raise include:

    (1) We need to emphasise the accurate and comprehensive collection and organisation of data, for both internal dissemination and external publication: there

needs to be a modern data system in place which allows for individual items of data to be made available through tiered access, and also to a public-facing web service. In other words, we need to be urging the creation of good back-end systems which are crucial to the effective management of good front-end systems.

(2) We need to encourage the drafting of a clear policy on what data should be published and when and to whom. This would include making restricted data available to select parties on a tiered basis; and a wider data set available to the public. The formation of such a policy should acknowledge the different views and needs of different stakeholders and recipients/users of courts data.

Item (1) is essential to achieving (2), and can be implemented before the finalization of (2). In other words, a robust system for data collection and control is a 'neutral' policy option and we should encourage the MoJ and Judiciary to get its back-end systems in order, regardless of the status of any policy agreement on the dissemination of data to various parties and external publication of courts data (also essential but can come afterwards).

- We should remind the MoJ (and other agencies) that data users and key stakeholders should be consulted on the design of (1). Likewise, data users and key stakeholders should be consulted on the formation of (2) – they should also consider canvassing the views of data subjects and their representatives, voices which are usually overlooked in such discussions.

- Ideally, we should also find relevant members of the judiciary with whom to engage on these points, whether individually or collectively.

- Academic researchers within the group, learning from and working with colleagues from other sectors, should look to systematically document the working of the current system, including what data is produced and where, with a view to informing the development of better internal and external collection and dissemination of data.

- Legal researchers and lawyers should be alert to the potential implications of the further development of data protection and privacy law within the UK for the collection and dissemination of public data.

More immediately, there could be an opportunity for this group to draft a set of proposals to circulate.

Judith Townend

Daniel Bennett

Information Law and Policy Centre, June 2016