

LOW INCOMES TAX REFORM GROUP

Data Sharing Review: The use and sharing of personal information in the public and private sectors RESPONSE TO CONSULTATIVE DOCUMENT

1. Introduction

- 1.1. This consultation is looking at whether there should be changes to the operation of the Data Protection Act and how data sharing policy should be developed to ensure transparency, scrutiny and accountability. We welcome the opportunity to contribute.
- 1.2. The Low Incomes Tax Reform Group (LITRG) was set up by the Chartered Institute of Taxation to be a voice for the unrepresented in the tax system. In this response, we consider the cross-government use of data and seek to identify potential areas where data can be used more efficiently and proactively for the benefit of those we aim to represent.
- 1.3. Our interest in data-sharing arises primarily through our interactions with HM Revenue & Customs (HMRC), the Department for Work & Pensions (DWP) and other government departments.
- 1.4. We regularly encounter problems faced by taxpayers and benefit claimants from which we have identified numerous instances of where cross-departmental working and sharing of data could produce benefits. We have also seen where existing methods create problems. Tax credits are a particular area of interest as these join together the realms of taxation and welfare support.
- 1.5. Our response does not follow the format of answering the questions posed but rather seeks to make general comment and provide suggestions.
- 1.6. The main theme of our response is that significant benefits should be achievable if the government were to take a holistic view of the individual; in doing so, the customer should receive improved service across government. Government departments should, in turn, realise efficiency gains.
- 1.7. Unfortunately there are risks associated. Not all parts of government are seen by the public as working in their best interests (although government itself might argue otherwise). In those circumstances, there must be adequate protection; key to this is that people should be informed, both in terms of what their data might be used for and what their rights are.

1.8. We are setting out our comments under the following headings:

Heading	Paragraph
Benefits and Opportunities from data-sharing	2
<ul style="list-style-type: none"> • Reduced administrative burden <ul style="list-style-type: none"> • Interactions with government • Quicker and easier processes • Identifying special needs • Paying what is 'right' and claiming what is due <ul style="list-style-type: none"> • Combating fraud • Working with the voluntary sector • Reducing poverty • Other low-income groups 	2.2 2.2.1 2.2.3 2.2.5 2.3 2.3.1 2.3.2 2.3.3 2.3.11
Risks of data-sharing and areas of concern	3
<ul style="list-style-type: none"> • Obfuscation <ul style="list-style-type: none"> • Clarity and openness about data-use across government • Harmonisation and clarification of data protection notices • Access to data <ul style="list-style-type: none"> • Cost • Knowing and exercising your rights • Safeguards <ul style="list-style-type: none"> • Protection of data and sanctions for failure • Protection of individuals' basic rights • Direction and timing of data transfer • Official error 	3.1 3.1.1 3.1.5 3.2 3.2.1 3.2.3 3.3 3.3.1 3.3.3 3.3.6 3.3.7

2. Benefits and Opportunities from data-sharing

2.1. Provided there is a clear benefit to the citizen and advance explicit consent is given for it, data-sharing should be encouraged. In terms of consent, if awareness is raised about how data can be used and how this might benefit individuals, public objections can be contained. We highlight some of the potential benefits and opportunities below.

2.2. *Reduced administrative burden*

Interactions with government

2.2.1. We would very much encourage an efficiently-run cross-government 'Tell us once' system, enabling the individual to notify changes to a single source and for the information then to be disseminated appropriately to each relevant department.

2.2.2. If data were shared across government in relation to certain life events, such as birth of a child or bereavement, this information could be processed on a proactive rather than reactive basis. This could be of great assistance to those facing a stressful or

difficult time in their lives. It would also avoid duplication of effort in different government departments and reduce the opportunity for mistakes to be made.

Quicker and easier processes

- 2.2.3. With effective sharing and use of data, there are potentially significant advances to be made in terms of helping taxpayers and benefits claimants to comply with their obligations. For example, it could be possible for government departments to issue pre-populated returns which need only be corrected or updated by the taxpayer.
- 2.2.4. Another more specific example is data-sharing between HMRC and the Student Loans Company (SLC). This is essential as loan repayments are collected by employers via the payroll and are managed by HMRC. Improving the shared data links between the two organisations could reduce the number of ex-students who over-repay their loan and who are then forced to pursue a reclaim of the overpayment.

Identifying special needs

- 2.2.5. The same principle would apply to using data both within and between departments to identify those with special needs (for example a disability or language barrier) so that a more targeted approach could be adopted in ensuring assistance and providing benefits. In a recent mystery shopping exercise conducted by LITRG, it was shown that a request for information from HMRC in a particular format (large print) was followed up by correspondence in ordinary format. Citizens should have the option to tell government about any special needs and, in return, expect to receive services in a manner tailored to their needs.

2.3. ***Paying what is 'right' and claiming what is due***

Combating fraud

- 2.3.1. In terms of HMRC carrying out its function to collect tax for the Exchequer, there are potential advantages in sharing data from other government sources and the private sector. Such data-sharing benefits the taxpaying population as a whole to the extent that it enables HMRC to combat tax evasion and fraud. However, HMRC is already given wide powers to do this by current legislation.

Working with the voluntary sector

- 2.3.2. Organisations working in the voluntary sector share individuals' information with HMRC and other voluntary sector agencies to achieve a successful and speedy resolution to a query or issue. In such cases, this is done with the individual's permission. The charity TaxHelp for Older People (TOP)¹ often works in this way, linking in with the work of other organisations such as Citizens Advice, Age Concern and Help the Aged.

Reducing poverty

- 2.3.3. In 1999, the then Prime Minister Tony Blair announced the government's intention to 'eradicate child poverty within a generation'. Much work has been done evaluating progress towards the HM Treasury targets which followed this announcement, for

¹ Registered charity no. 1102276

example by the Institute for Fiscal Studies¹; the general consensus is that more needs to be done. Sharing data could potentially help.

- 2.3.4. The Child Maintenance and Other Payments Bill proposes that the new Child Maintenance Enforcement Commission (CMEC) should use data transferred from HMRC to assess the child maintenance liability of a non-resident parent. The proposed benefit of this proposal is to facilitate faster processing of claims, without reference to the non-resident parent to determine the level of his or her income. With proper planning and safeguards, this is a theme which could be developed further.
- 2.3.5. Pensioner poverty levels are also a problem and could continue to be so for many years into the future – depending on government policy – according to a report by the Institute for Fiscal Studies². Our experience, and that of TOP, shows that many pensioners overpay tax; an unacceptable state of affairs for those who are often on the lowest incomes³.
- 2.3.6. For instance, while the system of registration for interest to be paid gross remains ineffective for many people⁴, pensioners – amongst others – could benefit from HMRC effectively matching data from the banks and building societies. Using data in this way would assist the HMRC mission to ensure that everyone pays what they are due to pay and no more.
- 2.3.7. There is scope to tackle poverty by using HMRC data to indicate people missing out on social security benefits. For example, notifying one department of a disability should lead to automatic signposting on how to access support and flag up potential benefits entitlement. A recent report⁵ by Community Links, LITRG and Child Poverty Action Group highlights some of the difficulties of interactions in the present system and makes recommendations including closer working of government departments.
- 2.3.8. According to our understanding of interactions between government departments, HMRC and DWP currently have certain legal ‘gateways’ within which they are able to exchange information for prescribed purposes. HMRC referred to these in Annex 1⁶ to their consultation document ‘Safeguards for taxpayers’ of 17 May 2007 in the following terms:
- ‘Generally the justification for sharing information is either to deliver administrative or efficiency benefits to persons dealing with government, or to tackle fraud or crime. An important consideration is always the balance of customer privacy versus the sharing of information to deliver improved public services.’*
- 2.3.9. To truly benefit vulnerable and unrepresented individuals who struggle to navigate their way through the tax and benefits system (both at national and local government level), more active use of information between the departments could be invaluable. For example, someone receiving pension credit may have savings which are being taxed unnecessarily; something which could be identified if HMRC and DWP data

¹ See for example http://www.ifs.org.uk/economic_review/fp244.pdf

² See <http://www.ifs.org.uk/comms/comm103.pdf>

³ See LITRG’s May 2007 report ‘Older People on Low Incomes – The Case for Tax Reform’ - [http://www.litrg.org.uk/uploadedfiles/document/1_437_pensionersreportA4\(1\).pdf](http://www.litrg.org.uk/uploadedfiles/document/1_437_pensionersreportA4(1).pdf)

⁴ ‘Banks fail low-income pensioners’ - <http://www.litrg.org.uk/news/latest.cfm?id=470>

⁵ ‘Interact: benefits, tax credits and moving into work’ - http://www.litrg.org.uk/uploadedfiles/document/1_483_InteractfinalreportDec07.pdf

⁶ See <http://tinyurl.com/yuz9c5>

were more closely matched. The value of HMRC data to help identify older people eligible for pension credit and other income-related benefits has started to be recognised and to this end HMRC and DWP have been working together. Other trials in this area have also been taking place¹.

2.3.10. On a local government level, the following examples show that the burden of vulnerable groups might be alleviated by sharing data to allow automatic award of benefits without individuals having to make a claim:

- The Northern Ireland Domestic Rating Review states the following with regard to the introduction of a lone pensioner discount²:

'The allowance will be available...[where] a person aged 70 or over lives alone. The Department does not have information on all such eligible households.... While such information might be available elsewhere (for instance, within Pension Service or HMRC), powers do not currently exist to allow this information to be shared with the Department for the purposes of administering the scheme. Since the allowance cannot therefore be awarded automatically, those who are eligible will therefore be required to apply for the relief.'

- The 'Lyons Inquiry into Local Government' produced recommendations regarding improvements to the link between central and local government in connection with take-up of council tax benefit³.

Other low-income groups

2.3.11. Students encountering the tax system through part time work in the vacations or during term time can also overpay tax; consultation on improved data-sharing processes could potentially ensure that happens less frequently.

3. Risks of data-sharing and areas of concern

3.1. **Obfuscation**

Clarity and openness about data-use across government

3.1.1. Hitherto we have been generally supportive of proposals for government departments to act in a more joined-up manner. For the man on the street, the interactions of government departments are particularly difficult to fathom. Research has shown, for example, that citizens are unclear about the divisions of responsibility between HMRC and the DWP. We therefore see potential benefits in cross-government data-sharing provided this is operated efficiently and with adequate safeguards against misuse or loss of data.

3.1.2. The second principle of the DPA is that 'Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.'

¹ See for example <http://www.dwp.gov.uk/mediacentre/pressreleases/2007/jun/emp026-260607.asp>

² <http://www.ratingreviewni.gov.uk/lone-pensioner.pdf>

³ Page 253 of the report – see <http://www.webarchive.org.uk/pan/15454/20070428/www.lyonsinquiry.org.uk/docs/final-07.pdf>

- 3.1.3. In our experience, there is likely to be an expectation from the general public that, for example, information obtained by HMRC from DWP is information which HMRC 'knows about' for all purposes. They are unlikely to understand any limitations imposed under the second principle. This calls for clarification and for further information to be made available to the public on what is (and what is not) provided for in law; the myths must be dispelled.
- 3.1.4. One of the problems with HM Revenue & Customs (HMRC) is that it is regarded as one entity for information purposes but it aims to serve a multitude of purposes. Its various and potentially conflicting functions include being: a tax collection agency; an anti-terrorist organisation; a police force; and a benefits agency. For this reason, some of its usage of data cannot be made public. But *as far as possible*, government agencies should make it clear up-front what use will be made of data.

Harmonisation and clarification of data protection notices

- 3.1.5. Long and incomprehensible Data Protection statements on government publications should be replaced by a plain-language, short and simple statement, which is explicit as to what it means for the individual. An accompanying centralised helpline could be introduced to explain what data-sharing is all about.

3.2. **Access to data**

Cost

- 3.2.1. The cost involved in a person making a subject access request can be a barrier to them exercising this right, particularly for those on low incomes for whom any such cost presents a significant obstacle, even if this is generally limited to £10.
- 3.2.2. Consideration should be given to making information available free-of-charge, especially in view of technological advances in the decade since the Data Protection law was enacted. Indeed, HMRC already waives any charge for making a request¹; a practice which we welcome. The majority of information held by organisations in the public and private sector is now likely to be stored electronically, theoretically making it accessible at 'the touch of a button' as opposed to a rigorous task of copying paper records.

Knowing and exercising your rights

- 3.2.3. More information should be made available so that people know their rights and how to exercise them. As with all rights bestowed upon us in law, we have to be aware of them before we can exercise them.
- 3.2.4. Citizens should be able to:
- find out easily what data is being held about them;
 - check the accuracy of such data; and
 - get it changed promptly if they can show it is in error.

Such an attempt can be made under the present law, subject to a potential charge, provision of identification, exemptions and a timescale of up to 40 days from the data controller receiving all the requisite elements of the application. In practice, awareness and exercise of this right may be limited, particularly in relation to

¹ See <http://www.hmrc.gov.uk/leaflets/dp-fs1.htm#5>

government.

3.2.5. Our experience with tax credits suggests that the Data Protection Unit of HMRC is very good at dealing with subject access requests, particularly where personal data cannot be traced in the Tax Credit Office's records. But the challenges are to:

- educate the rest of HMRC in data protection principles so officials know what data they may withhold and what they must release; and
- ensure government departments take better care in maintaining – and do not lose – personal data.

3.3. **Safeguards**

Protection of data and sanctions for failure

3.3.1. The public must have confidence in government departments' ability to protect their personal information. The public's confidence might be bolstered if they were explicitly asked for their advance consent on how data may be used (with certain overriding powers necessary in terms of crime prevention), and given assurance that their data would not be used otherwise. For instance, we consider that it is not generally appropriate for government-held data to be passed on for marketing purposes, unless it is for take-up marketing within government.

3.3.2. Robust systems need to be in place to ensure data security, accompanied by effective monitoring. Often in tax law we find there are serious consequences for the individual if they fail to meet their responsibilities. The public must be convinced that there are similar consequences where a government department fails *them*. A universal standard of responsibilities and practices should therefore be introduced across the board. Sufficient encryption and protection requirements should be in place to safeguard data from falling into the wrong hands.

Protection of individuals' basic rights

3.3.3. One concern is that government agencies have processes to 'risk assess' customers based upon third-party data they have received. In turn, this leads to customers being grouped into risk categories.

3.3.4. Whilst this strategy is necessary in the attempt to identify those who are wilfully avoiding their obligations, it does produce an uncomfortable 'presumed guilty until proven innocent' result for those identified as higher risk. It is important therefore that the safeguard is preserved whereby individuals can request sight of what data is held about them and what automated decisions have been made.

3.3.5. An individual's information should not generally be used for a purpose other than that for which it was originally intended without first checking that it is complete and fit for that purpose. Otherwise, there is a risk of incomplete or inaccurate data being used: information may have been supplied for one purpose (eg for income tax purposes) which another department takes, incorrectly, to be a complete statement of their position (eg for benefits).

Direction and timing of data transfer

3.3.6. We are concerned that data is used by HMRC on a one-way basis, ie to collect additional revenue but not to facilitate refunds for those who have overpaid tax or under-claimed benefits, reliefs, or tax credits. This produces inequality, with the bias

being in HMRC's favour. Much of this attitude can perhaps be traced to HMRC's traditions of confidentiality and to way the legislation on use and disclosure of information is framed, for example Finance Act 1989 section 182. This imposes heavy penalties, including prison terms, on officials disclosing taxpayer information for any purpose other than the limited authorisations in the section. So there is a bias in favour of not disclosing anything because of taxpayer confidentiality, and what might happen to the official if they step on the wrong side of the line. This needs to be overcome by conducting a thorough review of how data is currently shared and for what purposes, and introducing an appropriate framework through which information can be best used, obtaining consent from the individual where appropriate.

Official error

- 3.3.7. If data is not properly matched between government departments, there is a risk of individuals being treated incorrectly. A prime example of this was revealed in July 2007 when the DWP revealed that approximately 120,000 people had been affected by a mismatch of incapacity records between DWP and HMRC systems¹. Incorrect benefits had been paid and contribution records had to be adjusted. There must be sufficient safeguards in law to ensure that the relevant departments take responsibility for such errors when they are uncovered, minimising the impact on the individuals concerned.

LITRG
15 February 2008

¹ Hansard 23 July 2007, Column 47WS et seq