

## **Business Reference Panel**

**10:30 – 13:15 – Wednesday 20 September 2017**  
**Westminster Conference Centre, 1 Victoria Street, London**

### **MEETING NOTES**

#### **1. Welcome and Introductions**

Gordon Maddan welcomed everybody to the meeting.

#### **2. Rotational Sessions**

**(Group A: Large and Multi business; Group B: Small business/TAs; Group B: Food)**

##### **2.1 Standards, CE Marking and Notified Bodies post EU Exit**

Alexia Davison; Sue Bide; Daniel Mansfield; Richard Sanders

- Some EU members are lobbying for the UK to be excluded from CEN and CENELEC post Brexit. Other delegates had heard the opposite to this. RD requested evidence or any other intelligence on this.
- A paper had been produced requesting that the UK retain CE marking - this is high level. RD requested to see the background to the report.
- Some concerns about the costs involved if we have two regulatory regimes in place post Brexit, one for the UK and one for sales to the EU.
- We will not be able to have input into standards post Brexit. There are current negotiations regarding membership of CEN/CENELEC to enable this.
- What will the legal standing of the CE mark be post Brexit? This is unknown and will be part of the negotiations.
- Concerns about self declaration for CE marking and the problems this is causing across Europe – we need to be part of the solution to resolve this. RD is aware of this concern and is a market surveillance issue.
- Our backstop should be involvement in international standards bodies not affected by Brexit – RD currently inputs to these but only where we have a willing industry participant.
- Some organisations are actively involved in standards and influence this by having a large, weighted, vote. This weighted vote will reduce after Brexit.
- What would happen if we do not have a deal with the EU? RD is currently looking at alternatives, eg RAPEX /ICSMS and are exploring different scenarios.
- What will the status of notified bodies be post Brexit - is there any point using a UK notified body now if this is worthless in 18 months time. This is unknown. RD is creating case studies including the impact on the weights and measure regime.
- Some contracts are agreed 12-18 months in advance. Business need to know what the regulatory regime will be a long time in advance of it coming into force. RD is aware of this, but Ministers need to negotiate and make the decisions before we have the answers.

- Concerns about private imports undercutting legitimate businesses and putting consumers at risk. This is not a Brexit issue and there is currently a lot of thinking going on in this space.
- Businesses do not want any divergence from the EU legislative regime and concern that this will be difficult to avoid.
- Are we working with Defra - some EU Horticultural Marketing laws could be removed post Brexit. RD confirmed it is working with all other government departments.

## **2.2 Primary Authority – Realising the Potential**

Sarah Smith; Erica Sheward

### Group A

- The group discussed how they should access a Welsh partner.
- Personal data: how does this affect PA. Will RD clarify the position with relation to lists and details. It is the responsibility of the coordinator to communicate which details are required and to establish who is covered by PA, in terms of legal entity. Personal data will not be displayed on the register. The Information Commissioner's Office is happy to discuss the facts around this.
- Earned recognition and PA. The mechanisms and tools are there to work towards delivery. We need to encourage people to use it through inspection plans. Stuart Wiggans is happy to discuss this further and volunteer to test this. There is probably a benefit from the food side of things through the supporting regular angle.
- When will RD add more supporting regulators to the list. Stuart has others he would like to see in this space. RD is open to new ideas.

### Group B

- Thanks were extended to Erica Sheward and the team for making the process of transition so smooth and easy.
- Where a trade association has a relationship with a national regulator, should they be dealing with their PA and supporting regulator? Members need access to building sites to access the things like lift safety. A battle they have is that public sector creates different passport schemes for builders to enter into construction sites. How can we resolve this issue? Erica to have a conversation to explore this further.
- Would like to see PA expand its scope.
- Funeral Directors are unregulated as a sector. Is there a way they can help people understand their sector more and why it needs regulating.

### Group C

- There are issues where more EHO's are challenging PA advice. Discussions took place about the benefits of expert panels in testing advice and taking a wide range of views on the advice given.
- Can PA have a built in mechanism to transition to new advice. There is a tool in PA to give advice to new authorities which is underused but we can consider how we use it moving forward.
- Is there an intention to extend this to the other devolved administrations? Northern Ireland is a key concern for business sectors.
- What happens in the build up to October. Are they still using the old system?
- RD to write a concise summary of PA to send out to Trade Association members.
- The group thanked the PA team for all the help advice and guidance, the transition has been smooth and coordinators appreciate the support they have received

## **2.3 Product Recall and Other Corrective Actions – Launch of Consultation on PAS7100. Working Group on Product Recalls and Safety**

Neil Gibbins IFE; Brian Such, BSI; Tom Watson, Fia Vitaria, Transform; Gordon Maddan

Neil Gibbins provided an outline of the activities of the Working Group on Product Recalls and Safety which he had been asked to chair by Business Minister, Margot James. Neil set out the background to the group's report which was submitted to the Minister before the general election. Neil indicated that he appreciated the valuable support that he and the group had received in preparing its report.

Neil highlighted a number of key actions flowing from the report including a need for more central technical resource to support local authorities in meeting their product safety responsibilities, the need for a central database of product recalls and the development of a code of practice to encourage good practice in preparing for and implementing product recalls. Neil was encouraged that a range of work was taking place to follow up the group's report and he was awaiting the publication of the Government response.

WGPRS report:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/630364/wgprs-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630364/wgprs-report.pdf)

Brian Such, BSI project lead explained the process being followed in developing a publically available specification on product recall and other corrective actions coupled with guidance to regulators to support businesses in following the code. The key principle was that businesses needed to plan in advance for any corrective action that might be required in respect of products they would supply. The code provided detailed practical guidance on all aspects of this. The code also provided practical guidance for businesses actually facing the need to consider and implement corrective action. Part 2 of the code dealt with the responsibilities and the support role that market surveillance authorities could provide to businesses to support them in applying good practice and meeting their legal responsibilities. The code included a number of examples of recall communications, information on risk assessment methodologies and checklists to assist in validation of plans and review of corrective actions. A steering group had been working with BSI to develop the standard with a technical authorship team provided by BEIS. The draft standard had been reviewed in detail twice by the steering group and was to be issued for public consultation on 25<sup>th</sup> September. BRP members were requested to register with BSI and make comments on the draft. The consultation would run for four weeks and then the steering group would revise the draft in the light of comments received. The intention was that working to the BEIS timetable work on the detail of the standard would be completed by December 2017.

Gordon Maddan explained that the standard was intended to encourage best practice. The following aspects had led to most discussion so far and were potentially areas where a step change could be made:

- The role of MSA's in supporting business
- Traceability of products, components and of customers
- Arrangements in place for monitoring
- Notification requirements to the MSA
- Risk assessment methodologies
- Extent of action required to recover products

In discussion:

- Was development of the standard on track – it was a very tight timescale but was currently well on track.

- There could be a reluctance to advise local authorities and seek support as they could be seen as tending to err on the side of caution and force recalls where not necessary
- Why was BSI selected to do this work – UK National Standards body, and well respected and independent.
- Was accreditation to be considered – not at this stage as this was a publically available specification and not a standard. It would be reviewed within two years of publication.
- Need for easier ways to register products was discussed and availability to technical solutions
- Would code deal with role of banks and credit card providers in traceability of products?
- Did it apply to B to B transactions such as machinery – was targeted at consumer products but the principles would read across.
- The LA enforcement system was economically broken – would this support additional resourcing – was the level of expertise to support it still available in local authorities?

### **3. Q&A on Regulatory Delivery Update**

Graham Russell reflected on some of the issues covered in the rotational sessions earlier on the agenda, and also events over the Summer, and since the last meeting held in July. The Public Inquiry on Grenfell Tower started last week. This will raise questions for policy on regulation, with the relationship between government, regulators and consumers being even more important now. The Public Inquiry will see a significant step in resetting expectations around the regulatory agenda. As well as deregulation being challenged in building safety and product safety, it will be broader and impact on businesses, government and regulators.

It is timely that we are now talking about that, as RD has been working on Product Safety and Recalls and this has been stepped up over the Summer. We have been joined by Will Creswell, Deputy Director, from the Food Standards Agency, looking at national capacity on product safety issues. One of the key questions for the next period will be looking at how national regulators are carrying out their work in a PA style approach.

Graham had attended an ACTSO meeting earlier in the day, focussing on Primary Authority, Product Safety and EU Exit. ACTSO are interested in EU Exit both at local level and in the devolution space. Ministerial ambitions are high for the UK, and to ensure that the EU Exit works for everybody. It will take time to put systems in place to work with those across the UK, Europe and the rest of the world. There are currently multiple treaties between the EU and other parts of the world, and the UK will need to deal with these. The government is conscious of some of the frustrations and this group is a continued opportunity to inform them and shape the way forward.

In discussion:

- Given the situation we are in what opportunities do you see for us being more in control of our regulatory environment going forward?  
This will be a challenge because insofar as we are resetting our regulatory expectations. It is not always clear cut. If a manufacturer in the UK trades internationally, creating different standards can create costs and does not help.

### **4. General Data Protection Regulation**

Garreth Cameron, Information Commissioner's Office (ICO)

Garreth's team manages the ICO's strategic engagement with the private and third sectors. His work extends to regulated industries, such as financial services, telecommunications and energy, as well as general business including retail, advertising/marketing and technology.

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Data protection reforms are a package of requirements, with the General Data Protection Regulation taking effect on 25 May 2018. Negotiations are currently taking place in Brussels on the ePrivacy Regulation which will amend the rules concerning electronic direct marketing (email, text, phone), and is an update to the ePrivacy Directive which is implemented in UK law by the Privacy and Electronic Communications Regulations (PECR). There is also a Law Enforcement Directive (LED) due to be implemented at around the same time as GDPR. A new Data Protection Bill has recently been laid in Parliament and contains (i) domestic implementing measures for GDPR; (ii) transposition of the LED, (iii) other domestic measures, such as updating the ICO powers.

The ICO is currently funded by a notification fee which is paid by businesses. Under GDPR the requirement to notify will cease, so there is a need to find a new way to ensure the ICO is adequately funded. The current fees paid haven't changed in a long time, and the ICO needs to ensure fees are fair and reflect the amount of resource organisations need. The aim is to keep the system as simple as possible so that organisations will easily be able to categorise and determine the appropriate fee themselves. Organisations should continue to renew their notification under the DPA if they are required to do so, and there will be a focussed awareness raising campaign to inform potential fee payers about the new fees, once we have details confirmed.

Whilst the ICO do not wish to underplay the impact GDPR may have for some organisations, it is important to note that it is an evolution of the existing law rather than something completely new. The underlying principles under the Data Protection Act 1998 largely remain the same; for example businesses still need to be fair, lawful and transparent, and appropriate security controls to keep data safe and secure still need to be in place. Controls around transferring data out of the EEA are also still covered. Some areas of existing good practice have now become statutory requirements. Underlying all this is the desire to increase consumer trust. ICO's latest research shows that only 1 in 5 adults trust organisations with the use of their personal data use, which is bad for consumers and bad for businesses in a digital economy. The Commissioner's fining powers will increase and civil penalties may be up to 4% of annual global turnover/€20 million. Increased sanctions do not, however, mean that the ICO will take a fundamentally different approach to how it regulates and enforces the law. The Regulators' Code still needs to be complied with, and they look, as a first step, to help advise businesses; enforcement action and sanctions being reserved for the more extreme breaches.

Currently, most business are not required to report security breaches to the ICO. This will change, and they will need to report within 72 hours of discovering a breach. GDPR will also strengthen rights for consumers to obtain access to their data (subject access) which will be free of charge to the individual whereas currently a fee of up to £10 may be charged. There are also provisions relating to data portability, and the consumer's right to receive their personal data in a common electronic format, and to transmit this without hindrance. This builds on the government's work on Midata.

The requirements around consent – where consent is the legal basis for the processing - will also be strengthened. Businesses have said that this is a key concern for them, and draft guidance is already available. There will also be European guidance on this issue, and the ICO have been careful to ensure it doesn't produce domestic guidance which is inconsistent with the European position as this would in itself be problematic for businesses. It is important to understand the European nature of the regulation and the fact that data protection operates within that context. ICO is a member of the Article 29 Working Party, and has been working with European counterparts on A29WP guidance eg Data Protection Impact Assessments, Data Protection Officers, consent, profiling, and identifying a main establishment.

The ICO's aim, as set out in its strategic plan, is on improving transparency about the collection and use of personal data and ensuring organisations are accountable. The ICO has spoken to various stakeholder groups throughout the process of implementation, and they will help and provide advice and guidance to organisations as best they can.

In discussion:

- This is one of the most significant pieces of regulation to hit businesses, and there is a concern about awareness, particularly among small business.  
The ICO regularly speak to business groups such as the BRP – they have contact with the FSB - and also write in trade magazines and use social media. However, it is the responsibility of businesses to be alert and to listen, although for many small businesses, on a practical level, much will remain the same.
- Does everybody/every business have to report a breach? Who has to report it? What is considered to be a breach? How to you seek consent from people?  
The ICO has, or will be, producing guidance for organisations on these topics. The GDPR is principles-based so there aren't detailed rules in the Regulation for many aspects. Some criticism has come from businesses about the relative lack of guidance, and the ICO appreciates that businesses want clarity and guidance as soon as possible. The Information Commissioner has published a number of myth busting blogs.
- Is it possible to cascade some of these changes through the Primary Authority system?  
Garreth will be having a further discussion with Sarah Smith about that.
- Discussions are already taking place with the European Data Commissioners about making the GPS work. This is being led by Richard Thomas, who is outlining a model with Primary Authority/Ethical Business Regulation.  
Looking at certification methods, Codes of Practice etc for consumers to identify which is good.
- Right to Erasure: There are some areas of the reforms that have not been reported well.  
The right to erasure is not an absolute right. The ICO will be providing further guidance on individuals' rights as part of its core guidance refresh. The ICO is happy to receive any individual questions.

The ICO can be contacted directly by phone, live chat or email, details here:

<https://ico.org.uk/global/contact-us/>

## **5. Radar and Introduction to EU Exit Leads**

### **Small Business Commissioner (SBC)**

A digital service for the Small Business Commissioner's office is being implemented. The SBC will be established this year, enabling small businesses to resolve payment disputes. The SBC can signpost to more help, and consider complaints for small businesses with payment issues. This includes all businesses, from micro to larger businesses, and across all sectors. Many are unaware of the existing support on payment disputes.

Some small prototypes and testing is currently being built. If any of the panel knows of a small business or has members willing to contribute to the testing stage, please let us know.

Contact: Corinne Brooke (CCP) [corinne.brooke@beis.gov.uk](mailto:corinne.brooke@beis.gov.uk);

## **6. Date of Next Meeting**

The next meeting of the Business Reference Panel will take place on **Wednesday 6 December** in central London. If any member would be willing to host a future panel meeting please let us know.