



Openness Survey Paper
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1. Introduction

Public private partnerships (PPPs), like many forms of contracting for public services, disrupt traditional accountability structures. They can, though, open new routes to accountability provided that certain standards are met (ippr, 2001). One of these standards is openness (transparency), which sits at the base of many accountability considerations. Without adequate information about public services, citizens cannot form judgements about their performance or see whether taxes have been spent wisely.

Openness is an important issue in PPP policy and it has not yet been resolved fully. It is still common practice, as this survey found, to withhold an unacceptable amount of information about private finance initiative (PFI) projects, compromising their accountability. This includes important information about how value for money is secured in PFI contracts and the details of the services and assets purchased from the private sector.

There is little need, though, for the internal processes of companies to be laid bare by the accountability process or for legitimately confidential material to be opened up to public scrutiny. For instance profit remains a sensitive issue (UNISON, 2003) but the possibility of PFI companies making excess profits could be better controlled through a tough value for money process at the outset of the procurement, than by public scrutiny. Being open about aspects of the PFI that legitimately concern the public, such as value for money, should arguably allow the public and private sectors more legitimacy to keep sensitive matters, such as profit margins, private.

Some commercial information about PPP projects, including the PFI, needs to be kept secret in order to render projects viable. In some cases considerations of commercial confidentiality (see section 3) are legitimate. Typically these include the need to keep trade secrets confidential and to safeguard the competitive positions of the public and private sectors. However, this should apply only to a small proportion of the information in any PFI document. Where necessary this legitimate secrecy must be balanced against the wider public interest in ensuring proper disclosure of information.

It is important to ensure, though, that commercial confidentiality is not employed as a spurious justification to withhold information from public view. There is an increasing

acceptance that misuse of commercial confidentiality is unacceptable (see for instance CBI, 2002). All government PFI guidance suggests significant levels of disclosure of PFI information but there is good evidence that where such guidance is not mandatory, actual disclosure is often poor.

The key sources of information about PPPs and the PFI are the documents prepared during a PPP procurement. The procurement process revolves around the design and negotiation of a range of documents. Typically these set out everything from the initial project specification to the final details of what has been purchased. Each document is critical to an understanding of the deal at the stage of the procurement when it is produced.

Both the Code of Practice on Open Government (revised 1998) and the Freedom of Information Act (2000) (which comes into operation fully in 2005) suggest that much of the material in these documents should be made public, although different arrangements currently exist for local government. Guidance from the Treasury, from the Public Private Partnerships Programme (4ps) and the NHS Executive (2003) goes further and suggests timescales for what information should be made available and at what stage of the procurement.

In order to assess how much information is available publicly about PFI projects, ippr conducted a short survey during the summer and autumn of 2003. The survey aimed to establish the following:

- Was it possible for interested parties to gain access to PFI project documents?
- Were public bodies complying with government guidance on access to these documents?
- Could interested parties gain access to basic information about the performance of PFI contracts?

The survey was also designed to serve as a platform for the exploration of commercial confidentiality as an issue within PPP policy. It has provided ippr with an evidence base to assess whether or not excisions from the documents received are really commercially confidential.

The design of the survey (see section 3) was intended to assess PFI procurements at three stages:

- Midway through the procurement process: Can the public gain an accurate picture of what is being contracted for and how the procurement is progressing?
- Financial close: What has been purchased, what will it cost and how were the key decisions arrived at?
- Operational phase: Can the public assess how a PFI project is performing by gaining access to information about any performance deductions

The survey's conclusions are mixed. They point towards good disclosure practices in the NHS but suggest that disclosure in other parts of government is sometimes poor:

- 5/6 of the NHS organisations surveyed were able to provide the information requested
- 3/6 of PFI school projects supplied the material requested
- 3/6 Local government projects supplied the material requested
- No central government project supplied the material requested

This difference between standards of disclosure seems due, in part, to the different guidance on disclosure of PFI information operating in different parts of the public sector. The NHS guidance is tougher and seems to lead to a better standard of information disclosure. This is particularly important in an area where use of the PFI is particularly controversial.

Poor disclosure practices, particularly in PFI projects connected closely to the delivery of core public services, could be remedied by adopting NHS disclosure practices across government. Better use of the internet could give more ready access to information about PFI projects in procurement and after they have been signed. There is also a need to be more proactive in publicising performance information about PFI successes and failures. As PPPs take on more roles in providing public services, the public needs to be kept aware of where they are succeeding and what action is being taken if they fail. Furthermore, companies need to be willing to operate in an open manner if public trust in PPPs is to be improved.

2. Accountability, openness and the PFI

It is argued often that accountability is a prerequisite for good government but that accountability is sometimes ill-defined (Flinders, 1999). *Building Better Partnerships*, the final report of ippr's Commission on Public Private Partnerships, (ippr, 2001) pointed out that PPPs pose specific challenges to accountability mechanisms, of which openness is a key component. The purpose of this section is to set out briefly the role of openness in the accountability mechanisms required by the PFI. It is concerned almost exclusively with "downward" notions of accountability or openness, meaning openness to the public or to the media. "Upward" considerations of openness, to parliament, pose a different set of challenges. The paper is concerned with what the public do or do not see, an issue that does not arise for the audit bodies reporting to parliament. They have unrestricted access to the material at issue (OGC, 2002).

Building Better Partnerships (ippr, 2001) argued that public private partnerships (PPPs) needed to satisfy three principles in order to be properly accountable to the public:

- *Transparency* (openness): disclosure of information about PPP projects
- *Responsibility*: clarity as to the organisation or individual that can be held to account for particular services, actions or decisions. The need to apportion blame where serious failures occur is also important here
- *Responsiveness*: the ability of services to adapt to users needs and priorities.

The first principle, openness, is desirable partly because it is seen as engendering an ethos conducive to good government, encouraging behaviours in public servants such as honesty and trust. It is also desirable as it makes possible more concrete mechanisms of accountability, responsibility and responsiveness.

These mechanisms operate in different ways and at different points in the PFI process. For the purposes of discussion the process is separated into three distinct stages: consultation, post-contract signature and operational phase. In practice there is some overlap between all of them.

The initial consultation phases of a PFI project require openness. According to the Audit Commission (1999) consultation should be: "a process of dialogue that leads to

a decision". Dialogue about PFI projects cannot take place without the furnishing of information. PFI projects are inherently complicated and have long term consequences for service users. Without the provision of accurate and trustworthy information to the public there can be little useful dialogue between the public and those facilitating the PFI procurement.

In the past consultation has sometimes been difficult. Trade unions suggested to the Commission on Public Private Partnerships that information had sometimes been withheld spuriously on grounds of "commercial confidentiality" during this process, which has inhibited consultation (ipp, 2001). However, there are legitimate limits to the amount of information that may be disclosed during the procurement, particularly during negotiations with bidders (see section 3). Despite this, there is a need for the public sector body procuring the PFI project to release information to service users, without which the accountability process will be compromised. This should include:

- The rationale for the PFI project, what needs it is expected to meet
- Initial specifications for the project (often rendered as outputs)
- What changes there will be to services as a result of PFI

This information would typically be included within the Outline Business Case and the output specification contained in the Invitation to Negotiate. The Invitation to Negotiate is not typically a public document but there are often large sections of it that can safely be made public. Sometimes, the whole document is not sensitive. The nature of these documents is described in more detail in section 4.

As the competitive phases of the procurement begin, disclosure of information may have to be more limited. In order to preserve competitive tension, discussions with bidders have to take place in private, however, some release of information is still possible. For instance, some hospital PFI projects provide architect's plans of rival bids to staff and stakeholders. Where practical, public engagement such as this should be encouraged.

In the second stage of the PFI process, after contract signature, there is a need to put material in the public domain outlining how the PFI procurement proceeded. This is needed to:

- Provide service users with a clear knowledge of what services to expect from the PFI.
- Provide users with an understanding of how decisions were taken, including an explanation of any value for money assessment
- Provide users with the basic contract terms, which should include a level of information about payments to the contractor and the duration of the contract
- Provide information about the division of responsibility between the public and private sectors.

Release of information should arguably include original working documents including the Final Business Case (see section 4) and elements of the contract, but documents such as the NHS plain English summary of final business cases are also a useful step towards greater public understanding of the PFI. Where possible, these documents should be provided online, something a few NHS trusts are already beginning to do.

In the third stage of the PFI process, once PFI projects are up and running, a range of material should be made available publicly if they are to remain accountable. This should include:

- Public reporting of performance material, including, but not limited to penalties for poor performance (see section 3 for an explanation of how this can relate to commercial confidentiality)
- The structure of mechanisms for complaints and redress or forums for involving the public
- Information about any re-tendering of part of the PFI contract

In all these cases, as this paper argues later, disclosure of information should be proactive rather than reactive. It should be incumbent on public bodies, particularly those running or commissioning key public services, to place information in the public domain ahead of public demands for it.

3. Accountability and commercial confidentiality

A proportion of material generated during a PFI procurement will have to be withheld in order to secure the legitimate interests of both the public and private sectors. In the majority of cases this will be due to a need to keep commercially sensitive information confidential and to safeguard information provided in confidence (Amos, 1999). Safeguarding genuinely sensitive information provided in confidence is important as it should encourage the private sector to be more open with the public sector during a PFI procurement.

This creates a trade off between the public right to know and the need for some legitimate confidentiality. This section of the paper argues that this is a potential stumbling block to openness about PFI but that it is not as serious as might be first thought. Firstly, with one significant exception (the negotiations with bidders), most of the information required to hold PFI projects to account should not be commercially sensitive. Secondly, PFI contracting is about the purchasing of outputs. Commercial confidentiality is predominantly about preventing the disclosure of detailed inputs (how the service is provided, as opposed to what the service does). Not all PFI information needs to be in the public domain in order for accountability criteria to be met.

Currently there are few guidelines about what information is commercially confidential and what is not. The contractual definitions in PFI guidance are so wide-ranging as to not be informative, the definition in the Open Government Code (Lord Chancellor's Department, 1998) is also very broad:

“Information whose disclosure could lead to improper gain or advantage or would prejudice ... the competitive position of a department or other public body or authority”

and:

“Information including commercial confidences, trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party”

What concrete guidelines there are suggest that much of the important information required to hold PFI projects to account should *not* be confidential. The NHS

Executive's guidance on the release of PFI documents points out that the initial key documents should be released to the public "largely intact" (NHS Executive, 2003). Furthermore Office of Government Commerce standard PFI contract guidance gives examples of contracts released to the House of Commons with only pricing details removed (OGC, 2002). There are also time limits set by guidance for how long information should be kept commercially confidential (Treasury Taskforce, 1999). The taskforce anticipated that all information should be placed in the public domain within seven years.

Legitimate commercial confidentiality fulfils several needs in relation to the PFI. The chief public sector need for confidentiality is to protect its present and future negotiating position. During the procurement process it will be looking to withhold information such as the affordability analysis for the project, the release of which could prejudice competitive tension in the procurement, as it is a key driver of value for money. It may also look to withhold information that could prejudice its negotiating position in the future, for instance the specific deals negotiated for particular services.

For its part the private sector will be looking to withhold information that prejudices its competitive position. Typically this will include information that may assist a competitor in undercutting its bid, but also particularly post-financial close, information that would assist a competitor in replicating its business processes. This is also true of financial partners in a PFI project who may look to protect the terms on which lending is arranged (OGC, 2002). Essentially businesses should be interested in protecting information that is unique to them, which forms the basis of their ability to compete. It is important to stress that blanket confidentiality agreements covering PFI contracts are not sanctioned by any PFI guidance.

This need to protect sensitive information is particularly strong during negotiations with bidders. At this point both the public and private sectors derive financial security from the confidentiality of the procurement process. Confidentiality preserves competitive tension. This need for a greater level of secrecy at this stage stands in contrast to the relative openness that should be possible at other stages of the procurement.

As a matter affecting profit and loss some bodies have routinely withheld information about penalties in contracts for poor performance, when penalties have been applied and how large they were. ippr argued in *Building Better Partnerships* (2001) that in

this particular case, the sensitivity of the information is overridden by the wider public interest in the performance of public services. Contracting out public services does not absolve government from responsibility for them. Where PPP projects encounter difficulties, the public will naturally be curious as to what remedial action government is taking, as they would with conventional public services. The case of Capita, an outsourcing company involved in the Criminal Records Bureau PPP is illustrative of this point. Government broke a confidentiality agreement in order to disclose the financial penalties it had levied on Capita for poor performance. The public failure of the company to deliver its targets and the consequent political pressure on the government necessitated this response.

It should be clear from this short summary that while commercial confidentiality may inhibit openness, it is not an insurmountable obstacle. The summary has set out, though, some occasions where significant information cannot be disclosed. Principally these relate to the financial aspects of PFI schemes, the disclosure of which could prejudice the future achievement of value for money for the taxpayer. In these circumstances the public need to be able to have confidence in the proper functioning of competitive procurement and the initial mechanism through which PFI is chosen. This requires public bodies to be as open as possible about the procurement process. Proper use must be made also of internal accountability mechanisms within government, ensuring that audit bodies such as the National Audit Office receive all the facts and ensuring that tools like open book accounting are used to drive value for money through the life of the procurement.¹ These may prove more effective in holding the PFI to account than the public disclosure of complex financial information.

One significant caveat remains: for competitive procurement to function properly, there needs to be no inappropriate bias in favour of the PFI route. If public bodies are marched down the PFI path for the wrong reasons, in order to secure otherwise unavailable finance, then they may be less open with the public. Public bodies will have a strong incentive not to release information putting them in a bad light, such as

¹ Open book accounting is a generic term for a variety of accounting arrangements. With open book accounting, the purchaser gains access to part or all of the accounts of the organisation they are buying goods or services from. This may drive better value for money when competition is not practical or where contracts need to be renegotiated.

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contentious value for money assessments. The potential exists for this to drive the use of commercial confidentiality as an excuse not to make available material that should, in fact, be released.

4. Government guidance on access to information

There are two types of guidance covering access to PFI information: general guidance on access to information in government and guidance specific to the PFI.

Central government is covered by the Code of Practice on Open Government (Revised 1998). This does not provide the same right of access to information as the forthcoming Freedom of Information Act (2000) but does oblige central government to respond to reasonable requests for official information. These requests are subject to the exemptions outlined earlier in section 3 of this paper. The NHS is subject to a similar general set of arrangements, the Code of Practice on Access to Information in the NHS (NHS Executive, 1995). Its provisions are more specific regarding the types of information that should be made available, but do not differ greatly in terms of general obligations.

Local government is not subject to similar guidance regarding openness. This situation is soon to be clarified by the roll-out of the Freedom of Information Act (2000) in 2005. Part VA of the Local Government Act 1972, amended by the Local Government (Access to Information Act) 1985 gives the public general access to council documents and minutes of meetings, among other material. This general right of access is mediated by a range of substantial exemptions contained in schedule 12A of the 1972 Act. The relevant exemptions include an obligation to keep information provided in confidence secret and not to disclose information that could prejudice contract negotiations. The financial details of any arrangement to provide goods or services are also exempt.

There are two key guidance notes that deal directly with the PFI and access to information in central government and the NHS: the NHS guidance on the selection and preparation of schemes and the Treasury Taskforce guidance *Policy Statement No.4*. A third document, prepared by the Public Private Partnerships Programme (4Ps), interprets the Treasury guidance for the purposes of local government (including the education sector).

The NHS, the Treasury and the 4ps guidance have similar presumptions in favour of openness. The 4Ps, for instance state "all information should be disclosed except where there are genuine good reasons not to disclose" (4Ps, 1999).

However, while the general obligation in favour of openness is similar between the NHS, Treasury and local government, different specific recommendations are made as to what documents should be made available and when.

Box 1: The Business Case

The central document in the procurement process is the business case. Typically this goes through three iterations: the Strategic Outline Case, the Outline Business Case and the Full (or Final) business case. The last two of these were requested as part of ippr's survey. These versions are developed gradually over the procurement process in order to demonstrate:

- The need for the project
- The reasons for choosing PFI (options appraisal)
- How the project meets the identified needs

Initially the document will be quite short, outlining the potential direction for the project. As the procurement process continues it is worked into a more detailed form. In its final version, the Final Business Case, it should contain detailed outlines of almost all aspects of the PFI project. Its early release is important in the case of the initial versions of the document, the Strategic Outline Case (not included in the survey, typically only drawn up for NHS projects or large procurements) and the outline business case. As part of a consultation programme, release of the document should allow the public to understand and influence the next version of the business case.

The NHS guidance:

- Mandates a timetable for the proactive release of documents
- Stipulates that the Strategic Outline Case and the Outline Business Case should be available "largely intact"
- Mandates the release of the Final Business Case and the key terms of the contract (NHS Executive, 2003)

The Treasury guidance recommends:

- The release of a statement outlining the broad strategic objectives to be realised through use of the PFI, this is information that would typically be contained within the Strategic Outline Case (if prepared) or the Outline Business Case
- The release of the basic terms, during the procurement, on which government is likely to do business with the private sector
- At the appropriate stage details of buildings and services to be purchased in terms of outputs should be released
- At Invitation to Negotiate stage (at the start of the negotiated stage of the procurement), a copy of the Invitation to Negotiate should be provided to relevant trade unions or employee representatives.
- After financial close a plain English summary of the key terms of the contract should be released, as should an explanation for the award of the contract, which should include details of the public sector comparator
- Departments should consider releasing relevant documents depending on the number of stakeholders and the size and type of the project
- However, detailed information, such as “land title, ground conditions... or other similar technical specifications” should not usually be disclosed for reasons of timeliness. (Treasury taskforce, 1999)

This guidance differs from the NHS material in two key ways, first it is advisory for departments, as is the 4Ps guidance, which draws on it, whereas the NHS guidance is binding for NHS trusts. Secondly, while proactive in theory, it does not specify a mandatory timetable for the release of information in the manner of the NHS guidance. In order for interested parties to obtain key project documents, they may have to apply to receive them. It is intended more as a framework on which departments should draw when considering their disclosure arrangements than as the last word on PFI disclosure practices.

The distinction between the different approaches should be clear. The Treasury guidance makes a range of sensible and detailed recommendations about disclosure. Unlike the NHS guidance, though, it is advisory not mandatory and does not usually make reference to the release of specific project documents.

5. How the survey was designed

Different areas of government have different guidance covering disclosure of PFI information. The survey was designed to measure the willingness of public bodies to disclose documents against the standards set by NHS disclosure guidance. Although the guidance set down for use in the NHS is not ideal, it is superior to that in use in central and local government and other public services as it provides a mandatory timetable for the release of PFI documents to the public, as opposed to the more discretionary approach common across the rest of government. The rationale for this approach to the survey was that it would allow ippr to make comparisons between the openness of NHS authorities and other public bodies regarding PFI information. This is important as:

- guidance covering other areas of government has a similar general presumption in favour of openness as that covering the NHS, however the suggested disclosure obligations differ.
- there are few reasons why equivalent information that is not confidential in the NHS should be confidential in other areas of government (with some specific exceptions such as national security in the case of the MoD)

Therefore, using the NHS as a yardstick for the survey allows some conclusions to be drawn about the extent of unnecessary non-disclosure of PFI information by other areas of government.

The survey looked at 22 PFI projects chosen at random from the Office of Government Commerce signed deals list (the main source of PFI project details) and departmental lists showing projects in procurement. These projects were subdivided between:

- NHS (new hospital procurement) – 6 projects
- Local Government (housing, office accommodation, library and fire station procurement) – 6 projects
- Education (new school procurement) – 6 projects
- Central Government (road and office accommodation procurement) – 4 projects

Key PFI documents were requested from the public bodies responsible for the PFI project at three stages: mid way through the procurement process, after contract

signature and while projects are operational. Two documents were requested from two separate projects at invitation to negotiate stage and after contract signature²: During the operational phase ippr requested details of whether or not information about performance deductions was available publicly.

The 22 projects are quite a small sample of available PFI projects. Our intention, however, was not to generate statistics about disclosure but to enable indicative conclusions about standards of disclosure to be drawn and to generate case study evidence of good and bad practice. The sample size is quite sufficient for both of these purposes

Mid way through the procurement process, at "invitation to negotiate" stage (invitation to negotiate and outline business case)

At this stage the documents requested reflect what the public sector is intending to contract for. The Outline Business Case, described in more detail in Box 2, typically outlines how the project should meet the needs it was designed for and why the PFI has been chosen as the procurement route. The Invitation to Negotiate, a document issued to selected bidders, outlines what the public sector is looking to contract for. It will contain specifications for the project, in terms of outputs. It can also contain material such as a draft contract and draft performance or payment mechanism. Both of these documents are key to an understanding of what the public sector is likely to buy.

After the PFI contract has been signed (full business case and key terms of PFI contract)

At this stage the documents should outline what the public sector has purchased and how decisions during the procurement were reached. The full business case should outline how the project meets identified needs and provide a summary of what services and assets have been purchased. The key terms of the contract should outline the basis of the relationship with the private sector. These documents are key to an understanding of what has been bought from the private sector in terms of assets, how much it will cost and what levels of service are likely to be provided.

² Central government projects were not surveyed at Invitation to Negotiate stage as there were not enough projects to survey at the time.

After the project has become operational (summary of performance deductions)

Performance deductions are described in more detail in box 3. They provide a convenient analogue for how well PFI projects are performing. There is little guidance on whether or not performance deductions should be released to the public.

Box 3: PFI payments and performance deductions

Under the majority of PFI arrangements, the public body contracting for services makes an annual payment to the PFI company for the duration of the contract. If the contractor fails to meet agreed performance targets for service standards then this “unitary charge” payment may be reduced, in line with the terms of the contract. This provides a rough and ready approximation of how well the PFI contractor is performing.

The situation regarding PFI roads is slightly different. With some PFI roads payment is made according to the volume of traffic using the road, so-called “shadow tolls”. While the methodology for calculating the payment to the private sector is different, the principle of making deductions from payments for not meeting standards is consistent. Road projects using this payment system were included in the survey.

5.1 Initial suppositions

Building Better Partnerships (ippr, 2001) argued for an extension of the NHS guidance on disclosure to be rolled-out across government. This model was considered to be superior in that it:

- Mandates the disclosure of key project documents one month after they have been approved
- Mandates that they should be “publicly available” (placed in local libraries, for instance)
- Suggests that documents should be released “largely intact”

Our initial hypothesis was that this would lead to a better standard of disclosure of PFI documents than that evident in other areas of government. ippr had no suppositions concerning the disclosure of performance material.

6. Survey Findings

The first and most important issue drawn out by the survey is that transparency in the PFI projects surveyed is, outside the NHS, poor. Only 50 per cent of the information requested was available.

Table 1: Showing which areas of government replied with the required documents.

Area of Government surveyed	Pre-contract signature	Post-contract signature	While operational
NHS (Hospitals)	4/4	4/4	1/2
Local Government	4/4	0/4	1/2
Education (Schools)	3/4	0/4	1/2
Central Government	N/A	0/4	0/2

Note: two documents were requested in each case from each project, the figures shown above are for each document.

The second issue illustrated by the survey is that there is a disparity between best and worst practice on disclosure. In the initial stages of PFI projects outline business cases and invitations to negotiate were frequently available from both NHS institutions and other parts of Government and the public services. However, outside the NHS, documents detailing the substance and performance of the PFI project after contract signature were less likely to be disclosed.

As the previous section noted different sectors of government have disclosure guidance that is similar in spirit: that all documents relating to the procurement should eventually be made public (Treasury Taskforce, 1999; 4ps 2000). The survey seems to make it clear that this not the case outside the NHS after contract signature.

One possible reason for this is that while the NHS guidance is proactive, mandating the release of information one month after approval, the guidance covering other areas of government is discretionary. Central government has to respond to requests under the open government code (Lord Chancellor's department, revised 1998), but

is under few other rigid obligations. Local government is subject to the recommendations in the relevant PFI guidance and to the more limited access to information provisions in the relevant legislation. This allows a significant level of discretionary freedom when deciding whether or not to release documents to the public. This is problematic as all the information withheld is unlikely to be genuinely commercially sensitive. There is no reason why the overwhelming majority of a final business case for a PFI hospital should be public and why a final business case for a PFI school should be withheld in its entirety. This suggests that some of the material withheld as commercially confidential is not genuinely sensitive, or that public bodies have decided not to produce “sanitised” versions of PFI documentation for public use. In these circumstances it is likely to be difficult for stakeholders to hold decision makers to account. This may be a less serious issue in respect of projects in which the public do not have a direct stake, such as PFI office accommodation, but is of some importance when considering what information is available about schools and hospitals.

Guidance is not the only factor that influences decisions over whether or not to disclose information. Although the survey did not measure other elements, it is important to be aware of the influence that an organisation’s culture may have on its attitude to disclosing information. Risk aversion is an important factor in the behaviour of some public bodies. It may be judged that it is safer not to disclose information than to disclose and risk legal action from the private sector. Similarly it is possible that local factors, such as hostility to PPPs may have a role in excessive secrecy, as passing information to those hostile to the PFI may be thought to assist them in resisting the procurement.

Few solid conclusions can be reached about the public availability of performance deductions partly as there is currently no guidance covering their disclosure or non-disclosure and therefore no yardstick against which to judge their public availability. In the majority of cases surveyed, though, they are judged to be commercially confidential. Where they are not seems to be due more to local factors, such as the manner of their discussion and reporting, than any decision to actually publicise them.

It is important that performance deductions are made available publicly. Without information of this sort, it is not possible for citizens to have a real understanding of how well a PFI project is performing. It is worth pointing out, though, that

performance deductions should not be the only performance material published. A range of material should be presented in order that a balanced picture of a PFI project's strengths and weaknesses can be obtained.

Case study a – good practice, document release

Hospital PFI: letters were sent requesting the final business cases and key terms of the contracts for two different hospitals. In both cases these were available from the hospital. In one case, copies were sent to us. In the other ippr chose not to pay for a copies, although had we chosen to, it would have been supplied.

The documents in question were available in a local library as the guidance suggests. It would have been better, though if these were available online, as is becoming more common with the newer wave of PFI hospitals. Explicit excisions from the document received were limited to the financial model.

Case study b – poor practice, document release

School PFI: a letter was sent to the official in charge of the procurement requesting the final business case and the key terms of the contract. The treasury taskforce guidance suggests that the key terms of the contract are made available, along with a summary of affordability considerations and rationale for the procurement. These would usually be contained within the Full Business Case. Furthermore guidance suggests that: "procurement should be managed on the assumption that all information... will be in the public domain in future" (4ps, 2000). However, our letter went unacknowledged and when a follow up telephone call was made ippr were informed that all the information was commercially confidential and that it was "our information". Other areas of government were able to accede to requests such as this without difficulty and with only limited excisions of genuinely sensitive material.

Case study c – performance monitoring

Hospital PFI: Details were requested of the performance deductions made from unitary charge payments since the start of the project. These were not available in a collated form, however, they were not commercially confidential and were reported at public board meetings. Anecdotal evidence suggests that this is common practice in the NHS. Some trusts do not regard information of this sort as confidential but do not make any special effort to place it in the public domain.

Case study d – performance monitoring

Library PFI: Details of any performance deductions were requested from the project owner. We received a speedy and courteous response but the information requested was deemed commercially confidential. This experience was typical of our experience of requesting performance material in the course of the survey.

Sector	Project type	Information Requested	Information Received or Information on Website	Supplied on Time?
NHS				
	New Hospital	ITN and OBC	FITN and OBC as requested	Yes
	New Hospital	ITN and OBC	OBC on website, ITN sent by email	Follow up required
	New Hospital	FBC and key terms of contract	FBC and key terms of contract received	Follow up required
	New Hospital	FBC and key terms of contract	FBC and key terms of contract publicly available, charge for additional copy	Yes
	New Hospital	Availability of deductions	Deductions available to the public at trust board meetings	Follow up required
	New Hospital	Availability of deductions	No response	Contact made but no material received
Local Government				
	Housing PFI	ITN and OBC	Documents provided as requested	Follow up required
	Fire Station PFI	ITN and OBC	No response	Contact made, but no documents supplied
	Office Accommodation PFI	FBC and key terms of contract	Commercially confidential	Follow up required
	Leisure Centre	FBC and key terms	Sanitised documents provided to 4ps,	Follow up required

	PFI	of contract	nothing made public	
	Housing PFI	Availability of deductions	No deductions made	Yes
	Library PFI	Availability of deductions	Commercially confidential	Yes
Central Government				
	Office accommodation PFI	FBC and key terms of contract	No response	Follow up required, staff tasked with Freedom of Information enquiries were unable to help
	Road PFI	FBC and key terms of contract	Commercially confidential	Yes
	Office accommodation PFI	Availability of deductions	Commercially confidential	Yes
	Road PFI	Availability of deductions	Commercially confidential	Yes
Education				
	Grouped School PFI	ITN and OBC	ITN and OBC supplied	Yes

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	Grouped School PFI	ITN and OBC	OBC supplied, ITN commercially confidential	Follow up required
	School PFI	FBC and key terms of contract	Commercially confidential	Follow up required
	Grouped School PFI	FBC and key terms of contract	No response	Contact made but no documents received
	School PFI	Availability of deductions	No deductions made but information not commercially confidential	Follow up required
	School PFI	Availability of deductions	No deductions made	Follow up required

Key

OBC: Outline Business Case

ITN: Invitation to Negotiate

FBC: Full (Final) Business Case

7. Conclusion and recommendations

Openness is important in PFI projects in order for projects to be accountable but not all PFI information needs to be released to the public. What is required to be public, though, is much of the information contained within the key project documents drawn up during the procurement. Principally, this is needed in order to inform the consultation process, demonstrate that value for money has been achieved and allow public monitoring of the contract throughout its working life.

However, outside the NHS transparency in PFI projects is sometimes poor and overuse of commercial confidentiality is a factor in the withholding of PFI information. Better disclosure in the NHS seems to be due to tougher disclosure guidance and the mandatory timetable set down for release of information. PFI projects in the NHS have been particularly controversial and there is therefore a need to explain the PFI process and explain how the final details of the project were arrived at. Producing public documents may be time consuming and may not be worthwhile for projects in which there is little public interest. However, this serves to further highlight poor practice by those operating projects of direct interest to the public that do not freely disclose information, some PFI schools for example.

This experience suggests that:

1. The NHS guidance, or a similar model should be considered for local and central government PFI projects, particularly where frontline public services are concerned.
2. Information should be placed on the internet where possible, in line with best practice in the NHS. This should be accessible easily and not hidden in inaccessible parts of an organisation's website.
3. There is a need to police the disclosure guidance, even in the NHS in order to ensure that commercial confidentiality is not over-used. In this respect the Freedom of Information Act offers an opportunity to train staff. The public sector needs to learn to be tougher in negotiating with the private sector about the types of information that are confidential and also to resist the temptation to use blanket confidentiality clauses. This is less critical for PFI projects that do not involve key public services but is very important for those that do.

4. The actual performance of PPP projects will become increasingly important as they become more widespread and potentially encompass more front line public services such as clinical care in hospitals. It is therefore important that politicians can communicate where and how PPP projects are succeeding and what action is being taken to correct PPP projects when they falter.

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