

# Technology Advisory Panel Working Protocol: March 2019

## Background

The Technology Advisory Panel (TAP) was set up under the Investigatory Powers Act 2016 (“the Act”). The relevant provisions are given in the Appendix to this Protocol. This Protocol, agreed between the Investigatory Powers Commissioner (“the Commissioner”) and the Chair of the TAP, does not in any way supersede or restrict any provision of the Act.

Establishing and maintaining the TAP is a responsibility of the Commissioner but the TAP may also give advice to relevant Ministers.

The TAP and its members will work under the Code of Practice for Scientific Advisory Committees, incorporating the Seven Principles of Public Life (the Nolan Principles)<sup>1</sup>. In particular, the TAP Chair and its members will act in the public interest and observe the highest standards of public office, including impartiality, integrity and objectivity.

## Function of the TAP

The TAP has a dual function under the Act: both to advise about the impact of changing technology, and also to advise about the availability and developments of techniques to use investigatory powers while minimising interference with privacy. In the definition of the panel’s remit, “technology” will be taken to be interpreted broadly, to include all relevant areas of science and mathematics. However, the technological remit of the Panel should not be unduly diluted through consideration of matters of law, partisan politics or moral philosophy.

Given that a key role overarching all the Commissioner’s work is to ensure that powers are used in such a way as to minimise interference with privacy, advice may be sought from the TAP on any scientific or technological aspect of methods being used in the exercise of investigatory powers, either in a specific case or in a more general context. In addition, advice may be sought about other relevant technical matters within the capabilities of the TAP, for example in support of the development and effectiveness of other core functions of the Commissioner’s Office (IPCO), such as inspections and thematic reviews, and in support of any decision by a Judicial Commissioner exercising their powers to approve a warrant or other authorisation under the Act.

The TAP is not a decision-making body. Its advice cannot constrain any decision of the Commissioner or of any part of the Government.

## Operation of the TAP

The TAP operates in a number of modes:

1. Providing advice to the Commissioner or to a Judicial Commissioner when requested to do so. This advice may be sought and/or provided either formally or informally.
  - a. In the case of informal advice:
    - i. a request may be made by the Commissioner or any other Judicial Commissioner; this assistance may include attending inspections or other meetings.

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<sup>1</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

- ii. a request may also be made by any member of the Commissioner's staff nominated by the Commissioner to have this authority;
  - iii. in order to ensure that advice is given in a timely fashion, compliant with the obligation in Section 247 (4) not unduly to impede operational effectiveness, informal advice will often be given by an individual member of the TAP rather than the TAP as a whole. In such cases the member will keep a brief record, and will report back to the TAP.
- b. Formal advice may be sought by the Commissioner and will be delivered in writing by the TAP as a whole.
- 2. Provide advice on request to a Secretary of State or Minister. Because of the existence of Departmental Chief Scientific Advisers and Scientific Advisory Committees, it is not envisaged that this will happen very often. Normally a request for such advice will be routed via the Commissioner but if the TAP is approached directly by a Minister it will provide advice.
- 3. Provide advice of its own volition. The TAP will generally consult with the Commissioner on workstreams that it might wish to pursue. Especially in order to exercise its horizon scanning role, the TAP may seek wider input. Any discussions with the wider scientific and technological community will only take place at unclassified level and where possible there will be a published account of such discussions. If the discussions inform classified advice that will be given separately.

## Publication of advice and other documents

The TAP may recommend to the Commissioner that the Commissioner should publish advice or other reports or documents. In cases where advice is unclassified, or can be redacted to be unclassified, the normal presumption is that it will be published. The ultimate authority to decide whether something is published rests with the Commissioner.

## Membership

Appointments to the TAP are made by the Commissioner. In appointing members other than the Chair of the TAP, the Commissioner will normally act on the advice of the Chair. The TAP will have about six members including the Chair, chosen to cover the relevant fields of expertise and experience, and taking diversity into account. The relevant fields of technical expertise covered by the TAP will be reviewed from time to time by the TAP itself and in discussion between the Chair and the Commissioner. The usual term of office of a TAP member will be three years in the first instance, renewable at the Commissioner's discretion, but other terms may be used so that membership is staggered.

The likely experience of members is as follows, but this is not an exhaustive list:

- a) Industry, with substantial, current industry experience which need not be confined to the telecommunications sector.
- b) Security and Intelligence Agencies, Law Enforcement, and Government more generally, with the ability to bring detailed technical knowledge as well as general experience.
- c) Academics specialising in relevant fields.

While diversity of experience may be taken into account in appointing the TAP, members are appointed in a personal capacity and should be able to provide insight on a range of relevant issues across fields, rather than confine their advice to a specialist area. TAP members will be notified under Section 1 of the Official Secrets Act 1989, security cleared to Developed Vetting level, and receive STRAP clearance, to enable them to access information pertaining to the most sensitive of

investigative techniques. Appointment to the Panel will be dependent on successful accreditation in all necessary security vetting processes including pre-appointment checks on immigration and criminal convictions.

In line with the Nolan principles, members are expected to declare conflicts of interest or potential conflicts of interest. These may relate to current or former affiliations or activities. A register of such declarations will be kept and may be published. Conflicts of interest which are classified must still be declared to the Panel and to the Commissioner but they will not be released or published. The appropriate handling of any conflict of interest will ultimately rest with the Commissioner, who may require that a member stand down from a particular aspect of the TAP's work or even from membership altogether.

Upon appointment to the Panel, members must relinquish any paid political posts and not hold particularly sensitive or high profile roles in a political party. Panel members will be free to engage in political activities, provided that members are conscious of general public responsibilities and exercise proper discretion, particularly with regard to the work of the Panel.

The Commissioner may at any time remove a Panel member from office if they have failed to comply with the terms of appointment.

### Meetings with the Commissioner

The Chair of the TAP will have regular formal meetings with the Commissioner, at least twice a year, as well as more frequent informal contact. These meetings would enable formal commissioning of advice to be discussed initially, discussion of possible appointments of new members, resolution of any issues relating to resources, as well as more generally keeping the Commissioner up to date with the TAP's activities.

### Annual report

As set out in Section 246 (5) and (6) of the Act, the TAP will provide an Annual Report of its activities to the Commissioner and to Ministers. This will be produced in classified form, together with an unclassified version which will be included in the Commissioner's Annual Report or published alongside it.

### Resources

The Commissioner will use his or her best endeavours to provide the TAP with appropriate resources, including staff. It will be the Chair's responsibility to ensure that the TAP operates within resources and budgets agreed. The line management of any staff will be the responsibility of the Commissioner and his or her office.

### Resolution of Disputes

The TAP provides advice to the Commissioner on such matters under Section 246 (1) (a) and (b) as the Commissioner may direct or as the TAP deems is appropriate to meet its obligations under Section 246 (3). It is a matter for the Commissioner whether he accepts that advice. Where the Commissioner is minded not to accept the advice of the TAP then the Commissioner will discuss the matter with the Chair of the TAP.

In the event of uncertainty as to whether advice should be provided under Section 247 (1), (2) and (3), bearing in mind particularly the obligations imposed on the members of the TAP under Section 247 (3) and (4), the Commissioner and the Chair of the TAP may seek the views of the Government's Chief Scientific Adviser.

### Exercise of powers under Section 247 (5):

Section 247 (5) of the Act gives panel members the right to require “every relevant person [to] disclose or provide ... all such documents and information as the [TAP member] may require for the purposes of the Commissioner’s functions” and hence for the functions of the TAP. It is not envisaged that this power will be frequently invoked, but on any occasion where formal recourse is made to it, the Commissioner will be kept informed.

## Appendix: Relevant Sections of the Investigatory Powers Act 2016

### 246 Technology Advisory Panel

- (1) The Investigatory Powers Commissioner must ensure that there is a Technology Advisory Panel to provide advice to the Investigatory Powers Commissioner, the Secretary of State and the Scottish Ministers about—
- (a) the impact of changing technology on the exercise of investigatory powers whose exercise is subject to review by the Commissioner, and
  - (b) the availability and development of techniques to use such powers while minimising interference with privacy.
- (2) The Technology Advisory Panel must provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as the Commissioner may direct.
- (3) Subject to this, the Panel may provide advice to the Investigatory Powers Commissioner about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so).
- (4) The Panel may provide advice to the Secretary of State or the Scottish Ministers about such matters falling within subsection (1)(a) or (b) as it considers appropriate (whether or not requested to do so) but such advice to the Scottish Ministers may only relate to matters for which the Scottish Ministers are responsible.
- (5) The Panel must, as soon as reasonably practicable after the end of each calendar year, make a report to the Investigatory Powers Commissioner about the carrying out of the functions of the Panel.
- (6) The Panel must, at the same time, send a copy of the report to the Secretary of State and (so far as relating to matters for which the Scottish Ministers are responsible) the Scottish Ministers.

### 247 Members of the Panel

- (1) The Investigatory Powers Commissioner must appoint such number of persons as members of the Technology Advisory Panel as the Commissioner considers necessary for the carrying out of the functions of the Panel.
- (2) Subject as follows, each member of the Panel holds and vacates office in accordance with the member's terms and conditions of appointment.
- (3) A member of the Panel must not act in a way which the member considers to be contrary to the public interest or prejudicial to—
- (a) national security,
  - (b) the prevention or detection of serious crime, or
  - (c) the economic well-being of the United Kingdom.
- (4) A member of the Panel must, in particular, ensure that the member does not—
- (a) jeopardise the success of an intelligence or security operation or a law enforcement operation,
  - (b) compromise the safety or security of those involved, or
  - (c) unduly impede the operational effectiveness of an intelligence service, a police force, a government department or Her Majesty's forces.
- (5) Section 235(2) and (7) (information powers) apply to a member of the Panel as they apply to a Judicial Commissioner.

## 235 Investigation and information powers

...

(2) Every relevant person must disclose or provide to a Judicial Commissioner all such documents and information as the Commissioner may require for the purposes of the Commissioner's functions.

...

(7) In this section "relevant person" means—

- (a) any person who holds, or has held, an office, rank or position with a public authority,
- (b) any telecommunications operator or postal operator who is, has been or may become subject to a requirement imposed by virtue of this Act,
- (c) any person who is, has been or may become subject to a requirement to provide assistance by virtue of section 41, 43, 126, 128, 149, 168, 170 or 190, or
- (d) any person to whom a notice is given under section 49 of the Regulation of Investigatory Powers Act 2000.