

**OFFICE OF PUBLIC SECTOR INFORMATION
REPORT ON ITS INVESTIGATION
OF A COMPLAINT**

77M and Ordnance Survey

**DATE
APRIL 2014**

CONTENTS

Aim of this report	3
Outcome of this report	3
OPSI's role in the redress mechanism	4
OPSI's role under the PSI Regulations	4
OPSI's role under IFTS	5
Summary of the complaint	6
<i>The Complainant</i>	6
<i>The Public Sector Information Holder (PSIH)</i>	6
<i>Other Bodies</i>	6
Initial Assessment of Complaint	7
<i>Public Task</i>	7
<i>Re-Use</i>	8
<i>Intellectual Property and Copyright</i>	8
<i>Internal Complaints Procedure</i>	9
Summary of the complaint	9
Detailed Assessment of the Complaint	11
Overall Assessment	11
<i>Maximisation</i>	17
<i>Simplicity</i>	18
<i>Transparency</i>	19
<i>Fairness</i>	19
Role of APPSI Review Board	20
PSI Regulations Recommendations and suggested areas for improvement	21
IFTS Recommendations	22
Annex 1.....	23
Annex 2.....	24
Annex 3.....	27

Aim of this report

1. The Office of Public Sector Information (OPSI, part of The National Archives) received a complaint on 30 December 2013 from Mr Philip Highland of 77M (the Complainant) against Ordnance Survey (the Public Sector Information Holder (PSIH)). This complaint was submitted under the Re-use of Public Sector Information Regulations (SI 2005/1515) (the Regulations) and the Information Fair Trader Scheme (IFTS).
2. This aim of this report is to outline the matters which are the subject of this complaint and publish OPSI's findings and recommendations. The PSIH will be required to implement the recommendations within the specified timescales. OPSI will work with the PSIH to ensure it implements the recommendations to its satisfaction.
3. OPSI considered the evidence presented during the course of this investigation. In this particular case it was brought to our attention that new licence terms (user derived data contract terms) were issued by the PSIH to all licensed re-sellers during our investigation. Whilst this raises concerns about transparency, as these terms were not pre-agreed with OPSI, the terms themselves are outside the scope of this complaint. This report deals with the terms that were on offer at the time of the complaint. The terms issued which take effect from 1 April 2014 will need to be revisited to take account of the recommendations made in this report.

Outcome of this report

4. OPSI has upheld many of the issues raised by the Complainant. OPSI is not satisfied that it has been demonstrated that the Inspire Index Polygon dataset can be substituted with the PSIH's MasterMap product. OPSI will work with the PSIH to complete further analysis to ensure the terms and conditions and pricing levels of the Inspire Index Polygon dataset accurately reflect the value of the PSIH's intellectual property in the Inspire Index Polygon dataset and the risk that the Inspire Index Polygon dataset could be substituted for the MasterMap product

OPSI's role in the redress mechanism

5. OPSI is responsible for investigating complaints under the Regulations for failure to comply with any requirement of the Regulations. Complaints can also be brought against PSIHs who are members of IFTS if they are thought to have breached one or more of the IFTS principles. Complaints can be made under one or both regimes. Where complaints are brought under IFTS, OPSI will consider whether the principles of IFTS have been met. OPSI also investigates complaints that IFTS members have not met those elements of their commitment which fall outside the regulatory framework. In this case, the complaint has been made under both the Regulations and IFTS.
6. The procedures for investigating complaints can be found at www.opsi.gov.uk/advice/psi-regulations/advice-and-guidance/psi-complaints-procedure.doc.
7. It is not necessary for the Complainant to have a contractual relationship with a PSIH or be directly affected by the actions of the PSIH in order to bring a complaint.
8. Any complaint referred to OPSI must first have been made to the PSIH and it must have exhausted their own internal complaints procedure. The PSIH disputes the fact that the complaint has been through its internal complaints procedure.

OPSI's role under the PSI Regulations

9. The Regulations came into force on 1 July 2005. They implemented Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the Re-use of Public Sector Information.
10. The main aim of the Regulations is to maximise the re-use of public sector information and to stimulate the economy. Within the spirit of the

Regulations, a PSIH is expected to encourage re-use of its information. Although the Regulations impose no obligation on a PSIH to allow re-use of its information, the purpose of the Regulations is to establish a framework that provides for the effective re-use of public sector information. If re-use is allowed, a PSIH should:

- Publish a list of the main documents available for re-use
- Respond promptly to requests for re-use
- Put in place copyright and licensing arrangements
- Ensure that any conditions on re-use do not unnecessarily restrict re-use or competition
- Ensure there is no discrimination between applicants. If a public sector body wishes to re-use a document for activities which fall outside its public task, the same conditions shall apply to that re-use as would apply to re-use by any other applicant for comparable purposes
- Discourage exclusive arrangements
- Set up appropriate internal complaints procedures. There is also the option of asking OPSI to investigate the PSIH's actions and this should be made clear in the internal procedures

OPSI's role under IFTS

11. IFTS was introduced in 2002 following the Cross-Cutting Review of the Knowledge Economy.
12. IFTS was introduced to monitor and regulate the information trading activities of Crown bodies that produce Crown Copyright material. It sets a higher standard than the Regulations. Government bodies such as the PSIH are required to be part of the scheme as a condition of being

granted a Delegation of Authority from the Controller of HMSO to license Crown Copyright material themselves.

13. The IFTS principles are explained in Annex 3 of this report.

Summary of the complaint

The Complainant

14. 77M Limited is a new enterprise developing products and services for the land and property sector, based on information produced by the public sector. A number of existing providers which license data from the PSIH also operate in the sector.

The Public Sector Information Holder (PSIH)

15. Ordnance Survey (OS) is a government agency responsible for the official definitive surveying and topographic mapping of Great Britain. As the importance of geographic information increases, it is also responsible for maintaining consistent national coverage of other nationally important datasets. It was established as an Executive Agency in May 1990 and has operated as a Trading Fund since April 1999. The PSIH manages Crown Copyright material under a delegation of authority from the Controller of Her Majesty's Stationery Office (HMSO) and is therefore regulated under the IFTS. As a PSIH, it is also subject to the Regulations.

Other Bodies

16. This complaint concerns the INSPIRE Index Polygon dataset. This dataset is produced, held and updated by Her Majesty's Land Registry (HMLR) and its own elements of the dataset have been released under the terms of the Open Government Licence (OGL). If the information is to be re-used for commercial purposes, the re-user must contact the PSIH

for licence terms and fees. These terms were agreed during extensive discussions between HMLR and the PSIH during 2013.

Initial Assessment of Complaint

Public Task

17. OPSI carried out an initial assessment as to whether the complaint is within the scope of the Regulations as required by paragraph 10 of its published investigation procedures. This initial assessment was concluded in January 2014.
18. Regulation 5(1) (a) provides that the Regulations do not apply where “the activity of supplying a document is one which falls outside the public task of the public sector body”. While OPSI's Best Practice Guide considers the concept of public task that is referred to in the EU Directive 2003/98/EC, it is not defined in the Regulations. However, an organisation's public task can be construed from its statutory obligations or the obligations defined in its framework document or document of similar standing.
19. One of the key questions that OPSI addressed as part of its initial assessment of the complaint was whether or not the material that was the subject of the complaint – the INSPIRE Index Polygon dataset - fell within the PSIHs “public task”. This is important to determine whether the information is within the scope of the Regulations and therefore the complaint.
20. The INSPIRE Index Polygon dataset, which is subject to Crown Copyright, is held and updated by HMLR as part of its public task. Data to compile the dataset is supplied to HMLR by the PSIH under the Public Services Mapping Agreement (PSMA). Ordnance Survey's public task includes creating and maintaining the National Geographic Database and making the contents of the relevant datasets available. MasterMap Topography Layer is identified as one of the products that delivers the public task. According to the PSIH's statement of its own public task. We

accept, therefore, that this is supplied by the PSIH as part of its public task and is therefore subject to the Regulations.

Re-Use

21. Re-use is defined in the Regulations as “the use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body's public task for which the document was produced” (regulation 4(1)). Regulation 4(2)(b) sets out that the transfer of a document from one PSIH to another for the purpose of either one carrying out its public task is not re-use. Therefore transfer of data from the PSIH to HMLR does not constitute re-use of the data. The Complainant, however, is producing derivative products for commercial purposes and therefore this does constitute re-use within the meaning of regulation 4(1).

Intellectual Property and Copyright

22. There is currently uncertainty over the amount of the PSIH's intellectual Property contained within the INSPIRE Index Polygon dataset and whether there is a risk that the INSPIRE Index Polygon dataset could be substituted for MasterMap. In the PSIH's view, the polygons are heavily derived from its MasterMap topography layer product. HMLR is of the view that the information contained in the polygons has been compiled from a variety of sources and includes information which is now out of copyright.
23. It is accepted that the PSIH does have some IPR in the INSPIRE Index Polygon dataset, but no agreement was reached on the amount of material derived from the PSIH in the INSPIRE Index Polygon dataset and whether there is a risk of substitution. Some analysis was carried out as part of the discussions between HMLR and the PSIH in May 2013. However, the information in question is Crown Copyright and licensed for re-use under a Delegation of Authority from the Controller of HMSO. A

prerequisite of the Delegation is membership of the Information Fair Trader Scheme (IFTS).

Internal Complaints Procedure

24. On 23rd December 2013, the Complainant submitted a letter requesting resolution of the matters that are the subject of this complaint, stating that it would refer its complaint to OPSI if a solution could not be reached. The PSIH responded to the complaint the same day stating that its position remained unchanged i.e. that the licence terms and pricing provided to the Complainant would not change. It acknowledged that the complaint would be referred to OPSI. The Complainant was not satisfied with this and referred the matter to OPSI on 30 December 2013 under regulation 18 of the Regulations. Regulation 18 of the PSI Regulations gives two circumstances where a complainant can refer a complaint to OPSI – (i) where the person has exhausted the internal complaints procedure of the PSIH, and (ii) where the PSIH has failed to deal with the complaint. It is not clear either that the PSIH properly considered the complaint or dealt with the complaint. A referral to OPSI is permissible under both scenarios. It should be noted that the PSIH disagrees that the internal process has been exhausted.

Summary of the complaint

25. In June 2012, the Complainant contacted HMLR to enquire about re-use of its INSPIRE Index Polygon dataset. The data was scheduled to be released in December 2012 for re-use under the conditions of the Open Government Licence (OGL). HMLR and the Complainant agreed a price of £60,000. The data was, however, not released as planned.

26. Between February and June 2013 discussions took place between HMLR and the PSIH in an attempt to agree pricing and licensing terms. These parties reached an agreement that the data would be released under the OGL for non-commercial re-use, but for commercial re-use terms, re-

users would need to contact the PSIH for a commercial licence. The reason for this is that the PSIH was concerned that release of the dataset under the OGL could undermine the PSIH and its Licensed Partners. It contends that INSPIRE Index Polygons could be used as a substitute for MasterMap Topography Layer and that licence terms should reflect this, particularly to ensure fairness across its Licensed Partners. Terms have always been available to re-use the data commercially. However, The Complainant was not satisfied that these were fair or proportionate.

27. Following the agreement between HMLR and the PSIH, the data was released under a modified OGL in September 2013 with caveats for commercial re-use. The Complainant then contacted the PSIH for commercial licence terms and pricing. The Complainant alleges that the terms and prices were excessive and punitive. The Complainant states that the terms are the same as those for the MasterMap topography layer dataset. There have been lengthy discussions between the PSIH and the Complainant in an attempt to reach a mutual position. The Complainant asserts that the INSPIRE polygons and MasterMap topography layer are not comparable products and therefore should not be subject to the same licensing regime.
28. After the Complainant submitted his complaint to OPSI on 30 December 2013, the governance proceedings were completed, the timescales of which were communicated to the Complainant. . On 21 January 2014 the PSIH provided the Complainant with new pricing and licensing terms. These were rejected and the Complainant advised OPSI that the investigation should continue. The report deals with the terms and pricing that were offered in December 2013 at the time of the complaint.
29. The Complainant alleges that the PSIH's actions have breached the Regulations and IFTS.

Detailed Assessment of the Complaint

30. The Complainant has not specified under which provisions of the Regulations the Complaint is made. OPSI has made an assessment and to the extent that the issues raised by the Complainant are within the scope of the Regulations, Regulations 4, 8, 11, 12, and 15 are considered applicable. These Regulations are set out in Appendix 2.

Overall Assessment

31. Having carefully considered the documentation supplied to us in the form of the written statements of complaint, from both parties (see timeline in Annex 1), email correspondence and, having met relevant parties, OPSI partially upholds the complaint. Our reasons and recommendations are developed below

Issue 1

32. The Complainant alleges that the time taken to grant a licence to re-use the data is excessive and has prevented his product from being brought to market. The Complainant states that he was granted licence terms from HMLR prior to discussions with the PSIH; however the PSIH prevented these from being signed and insisted on commercial licensing terms.
33. The PSIH states that terms have always been available to the Complainant and discussions between itself and the Complainant only began in September 2013. It alleges that from that point the PSIH worked hard to come to an agreement on terms to re-use the data commercially.
34. The PSIH states that the matter was considered as part of the next available Governance meetings in November 2013 and January 2014. It states that as a result of the potential revenue loss (both to the PSIH and potentially its licensed Partners) a quick decision could not be reached and any delays were unavoidable.

35. **Complaint not upheld.** OPSI is in no doubt that the time taken from the initial request made to HMLR to re-use the INSPIRE Index Polygon dataset in 2012 until the point of this complaint in December 2013 is excessive; however, OPSI can only consider the period of time from the request to the PSIH in September 2013 as the delays that occurred prior to this time are outside the scope of the complaint, as they relate to another PSIH.
36. Regulation 8 states that a PSIH should respond to a request for re-use within 20 working days and this period should only be extended if the request raises complex issues.
37. It is clear that this request for re-use does raise complex issues and there is evidence in the form of email correspondence between the Account Manager and the Complainant that the request was responded to within the timeframe prescribed by the Regulations.
38. The PSIH and HMLR spent a significant amount of time trying to agree licensing terms. HMLR wished to license the dataset as open data but this conflicted with the PSIH's business model. Commercial licensing terms remained open to re-users, including the Complainant, throughout this process. Subsequent discussions with the Complainant revolved around potential changes to these terms. It would seem, however, that it is reasonable to conclude that the PSIH had sufficient time between December 2012 and September 2013 to consider the issues that the release of this dataset would raise and that these could have been raised at Governance meetings sooner.
39. OPSI concludes that whilst the PSIH is not in breach of the Regulations, **OPSI recommends that as a matter of good practice, the PSIH should ensure that permission for re-use is not unnecessarily delayed by the need to clear re-use decisions at Governance meetings.** OPSI to review progress by 30/06/2014.

Issue 2

40. The Complainant states that whilst the original licence offered by HMLR was the OGL, the PSIH now requires him to sign one of its commercial licences that allows re-use of MasterMap data. The Complainant believes that the INSPIRE Index Polygon dataset is not comparable to MasterMap and that the licence terms are restrictive and excessive.
41. The PSIH considers that there is a risk the INSPIRE Index Polygon dataset could be substituted for its MasterMap Topography Layer product when overlaid onto a mapping product and should therefore be licensed on equal terms so as not to disadvantage existing MasterMap customers.
42. The PSIH argues that it has significant Intellectual Property Rights (IPR) in the HMLR INSPIRE Index Polygon dataset and the terms offered reflect this.
43. The PSIH and HMLR have had lengthy discussions in an attempt to determine how to license the INSPIRE Index Polygons. These discussions led to an attempt to determine the amount of the PSIH's IPR within the dataset and the extent of the possibility of substituting the INSPIRE Index Polygons for MasterMap. No agreement has been reached regarding the amount of IPR but it was felt that there was a genuine risk of substitution so it was agreed that to re-use the information commercially a re-user must contact the PSIH for commercial licence terms.

OPSI's Assessment

44. **Complaint upheld.** As potential for substitution between MasterMap and the INSPIRE Index Polygon dataset remains unclear, and is, in OPSI's opinion, the crux of the issue, **OPSI recommends that the level of coincidence and possibility of substitution between the INSPIRE Index Polygon dataset and MasterMap is clarified no later than 30/06/2014.**

45. Under Regulation 12, a PSIH must ensure that conditions imposed on re-use must not unnecessarily restrict the way a document can be re-used. OPSI has had discussions with the relevant parties and will work with the PSIH and HMLR to attempt to resolve the IPR issue. Once this has been clarified, the relevant bodies can determine whether a commercial licence is appropriate or whether the polygons can be re-used commercially under the conditions an amended OGL. **OPSI recommends that the PSIH works with relevant parties to determine the appropriate licence terms and that these are approved by OPSI prior to release and no later than 30/06/2014.**

Issue 3

46. The Complainant sets out the pricing model that forms the subject of this complaint.
47. The PSIH explained its views on the pricing. The PSIH stated that there is a high proportion of derived data and co-incident IP in the INSPIRE Index Polygon dataset. There is a risk that customers could substitute MasterMap with the INSPIRE Index Polygon dataset so the price needs to reflect this and be fair to all licensed partners whilst ensuring revenue targets are met.
48. Following its meeting on 20 January, the PSIH offered the Complainant a new pricing structure. This has not formed the basis for our analysis.

OPSI's Assessment

49. **Complaint upheld.** OPSI rejects the claim that the prices reflect the possibility of substituting MasterMap for the INSPIRE Index Polygon dataset as the analysis carried out was not sufficient to demonstrate the level of risk sufficiently.
50. Under regulation 15, the total income should not exceed the cost of collection, reproduction and dissemination of documents plus a reasonable return on investment. Until detailed analysis is concluded to demonstrate the level of coincidence and substitutability, OPSI cannot see any justification for the current pricing regime. It should be noted that

there is less detail contained within the polygons than the MasterMap product, the INSPIRE Index Polygon dataset contains information from other sources and the data has already been collected.

51. It is important that, in the long term, an agreement is reached on the amount of the PSIH's IPR in the INSPIRE Index Polygon dataset and whether there is a risk of substituting the INSPIRE Index Polygon dataset for MasterMap in order to produce a reasonable pricing regime. In the meantime, **OPSI recommends that the PSIH should adopt an interim pricing regime to reflect the fact that the INSPIRE Index polygon dataset is not synonymous with its MasterMap product and should not command a higher price no later than 30/04/2014.**
52. **In the longer term, OPSI recommends that a more detailed analysis must be conducted to determine the level of coincidence and risk of substitution and determine suitable pricing structures in line with regulation 15. This should be implemented no later than 30/09/2014.**

Issue 4

53. The Complainant wishes to be allowed to offer a 'view only' service similar to that offered by data.gov.uk, and other Government organisations which receive the information free of charge. A 'view only' service is where the information can be viewed online but not re-used commercially.
54. The PSIH states the Public Sector Mapping Agreement (PSMA)¹ member licence licenses public sector members to use Ordnance Survey data for their "Core Business" of government, which is defined to exclude "Commercial Activities" and "Competing Activities".
55. It states that as the Complainant is a commercial enterprise rather than a public sector entity, it assumes that he wishes to make views of the HMLR INSPIRE Index Polygons available for a commercial purpose

¹ <http://www.ordnancesurvey.co.uk/business-and-government/public-sector/mapping-agreements/index.html>

(even if such purpose is indirect, i.e. where the views themselves are free) and therefore the re-use is not comparable to that of data.gov.uk.

OPSI's Assessment

56. **Complaint not upheld.** PSIH data (including MasterMap Topography Layer) is provided to Government bodies under the PSMA in order to fulfil their public tasks. If these public sector bodies were to re-use the information commercially, they would need to contact the PSIH to obtain a licence to do so and the licence terms should be the same as those offered to the Complainant.
57. OPSI considers that, as the Complainant is not a public sector body and is not exercising a public task, the re-use by the Complainant is not comparable to that carried out by such organisations. OPSI finds, therefore, that **the PSIH is not in breach of the PSI Regulations on this matter.**

Issue 5

58. The Complainant considers that the data cannot be policed and therefore his competitors could download the data free of charge and later re-use the information for commercial purposes. These competitors would then be at an unfair advantage.
59. Whilst HMLR will not be monitoring downloads or infringing usage, the PSIH states that it and its Licensed Partners will monitor and respond to such infringements in the usual way. Where a third party conducts commercial re-use without obtaining the appropriate licence terms, that third party will be infringing the terms of the licence and breaching Crown Copyright. Whilst HMLR will not be monitoring downloads or infringing usage, the PSIH and its Licensed Partners will monitor and respond to such infringements robustly.

OPSI's Assessment

60. **Complaint not upheld.** The Regulations impose no obligation on the PSIH to police the data and therefore **there is no breach of the Regulations.**

Issue 6

61. The Complainant believes that the PSIH has placed an additional obstacle in the way of re-use by releasing the data in a format which is not commonly used in the industry therefore making it difficult to re-use.
62. The PSIH states that it is HMLR that sets the format, not the PSIH and there is no case for the PSIH to answer.

OPSI's Assessment

63. **Complaint not upheld.** OPSI notes that the polygons are in Geography Mark-up Language {GML format} and are provided by HMLR and not the PSIH.
64. Under regulation 11, neither the PSIH nor HMLR are under any obligation to change the format of the document. **As such there is no breach of the Regulations.**

The Information Fair Trader Scheme

65. The PSIH was an accredited member of IFTS at the time the Complainant submitted his initial request for information; therefore we find that the complaint does arise under the IFTS. As the Complainant has not specifically stated under which principle he wishes to complain, we have analysed the issues under each of the IFTS principles and consider that Maximisation, Simplicity, Transparency and Fairness are central to this complaint. OPSI's findings and recommendations are summarised below.

Maximisation

66. Licensing responsibilities are clearly defined within the PSIH and the Complainant has a dedicated point of contact with whom he has communicated regarding licensing of the dataset. The importance of re-use is understood across the organisation and the PSIH has a governance structure in place to regulate its licensing activities and ensure customers are treated fairly.

67. This governance structure means that there are sometimes delays in licences being issued when complex issues are raised. The PSIH felt it was necessary to refer this licensing decision to two separate Governance meetings before a decision on licence terms and pricing could be made. This was due to a perceived risk to its MasterMap customers. These meetings are not held frequently and resulted in delays in the decision making process.
68. Whilst the information requested raised complex issues, the PSIH had been aware of the issue for several months prior to the request for re-use and the PSIH could have demonstrated best practice by anticipating the need to resolve issues and come up with reasonable terms and pricing sooner. **OPSI recommends that the PSIH should address known issues promptly and have the ability to convene meetings outside of the 6 monthly timeframe in order to reduce the time taken to reach a decision regarding re-use of its information so that re-use of its information is maximised.**
69. The PSIH has demonstrated that it shares data freely with other PSIHs by sharing the information with HMLR under the PSMA; however **OPSI recommends that the PSIH should avoid delays where there are differences concerning the level of IP.**

Simplicity

70. Re-users of the INSPIRE Index Polygon dataset download the data from the HMLR website under the terms of the modified OGL. However, they are directed to the PSIH if commercial re-use is required. For a licensing process to be simple, there should be only one point of contact for licensing arrangements. OPSI considers that as a process this is a priority attention area as the process hinders re-use.
71. In OPSI's assessment, **the PSIH is in breach of the Simplicity principle** as the process involves applying in effect for two licences.
Recommendation: **The PSIH should work with HMLR to simplify the**

process to apply for a licence to re-use the information

commercially, no later than 30/06/2014. Once the amount of IPR has been clarified, a longer term licensing solution should be found and agreed with OPSI – see recommendation 4.

72. At our last re-verification we noted progress in simplifying the licence model and improving the website in navigating the licensing section, however we still feel there is progress to reduce the length and make it less legalistic and technical. **OPSI recommends that the PSIH simplifies the licence in order to make it easier to understand by 30/09/2014.**

Transparency

73. As explained in paragraph 70, the process of applying for a licence to re-use the INSPIRE Index Polygons is not customer friendly as there is no single point of contact to apply for a licence. The Complainant requested the information from HMLR in June 2012. However, after a period of more than 12 months the Complainant was directed to the PSIH for a licence to re-use the data commercially. **The PSIH is in breach of the Transparency principle as the way in which customers gain licences to re-use this information is not clear. OPSI recommends that the PSIH ensures that it is clear on its website how to obtain a licence to re-use the INSPIRE Index Polygon dataset and what licence terms are applicable, no later than 30/06/2014.**

Fairness

74. The question of the possibility of substitution of the between INSPIRE Index Polygon dataset and MasterMap must be resolved to determine appropriate licence terms and ensure fairness. **See recommendation 2.**
75. **The pricing issue needs to be resolved as a priority as there has been no clear explanation on how it supports fairness. See recommendations 4 and 5.**
76. The INSPIRE Index Polygon dataset is re-used by data.gov.uk under different terms than those offered to the Complainant. Under the Fairness

principle of IFTS, re-users should be treated the same for the same type of re-use. The data is supplied for non-commercial re-use and as part of its public task. It would appear that the Complainant will be re-using the information for commercial gain; therefore the type of re-use is not the same. **As such this is not a breach of the fairness principle.**

Role of APPSI Review Board

77. In accordance with regulation 20 of the PSI Regulations, the PSB and the Complainant have the right to apply to the Advisory Panel on Public Sector Information (APPSI) Review Board for review of the recommendations made under the PSI Regulations in this report if they are dissatisfied with them.

PSI Regulations Recommendations and suggested areas for improvement

No.	Recommendation	Deadline	Paragraph Reference
1.	OPSI recommends that as a matter of good practice, the PSIH should ensure that permission for re-use is not unnecessarily delayed by the need to clear re-use decisions at Governance meetings.	30/06/14	39
2.	OPSI recommends that the level of coincidence and possibility of substitution between the INSPIRE Index Polygon dataset and MasterMap is clarified.	30/06/14	44
3.	OPSI recommends that the PSIH works with relevant parties to determine the appropriate licence terms and that these are approved by OPSI prior to release and no later than 30/06/2014.	30/06/14	45
4.	OPSI recommends that the PSIH should adopt an interim pricing regime to reflect the fact that the INSPIRE Index Polygon dataset is not synonymous with its MasterMap product and should not command a higher price no later than 30/04/2014.	30/04/14	51
5.	OPSI recommends that a more detailed analysis must be conducted to determine the level of coincidence and risk of substitution and determine suitable pricing structures in line with regulation 15. This should be implemented no later than 30/09/2014.	30/09/14	52

IFTS Recommendations

No.	Recommendation	Deadline	Paragraph Reference
7.	OPSI recommends that the PSIH should address known issues promptly to reduce the time taken to reach a decision regarding re-use of its information so that re-use of its information is maximised. The PSIH should not wait for a request for re-use or a complaint.	See rec. 1	68
8.	OPSI recommends that the PSIH should avoid delays where there are differences concerning the level of IP.	30/06/14	69
9.	The PSIH should work with HMLR to simplify the process to apply for a licence to re-use the information commercially	30/06/14	71
10.	OPSI recommends that the PSIH simplifies the licence in order to make it easier to understand.	30/09/14	72
11.	OPSI recommends that the PSIH ensures that it is clear on its website how to obtain a licence to re-use the INSPIRE Index Polygon dataset and what licence terms are applicable, no later than 30/06/2014.	30/06/14	73

Timeline

- June 2012 Complainant met HMLR to discuss INSPIRE download, which was due for release in November 2012.
- Autumn 2012 the PSIH became involved in negotiations with HMLR
- November 2012 the INSPIRE download was postponed
- June 2013 terms under which HMLR would release the data were agreed between the PSIH and HMLR
- September 2013 HMLR launched the INSPIRE download
- 26 September 2013 the Complainant contacted the PSIH to request licence terms and pricing
- Between 26 September 2013 and 20 January 2014 the PSIH was in dialogue with the Complainant to progress licensing proposals in an attempt to agree licence terms and pricing. .
- 23 December 2013 the Complainant complained to the PSIH 30 December 2013 the Complainant referred its complaint to OPSI under the Regulations and IFTS

Annex 2

Applicable Regulations

Re-use of documents

4. (1) Subject to paragraph (2), re-use means the use by a person of a document held by a public sector body for a purpose other than the initial purpose within that public sector body's public task for which the document was produced.

(2) Re-use shall not include—

(a) The transfer for use of a document within a public sector body for the purpose of carrying out its own public task; or

(b) The transfer for use of a document from one public sector body to another for the purpose of either public sector body carrying out its public task.

Responding to a request for re-use

8. (1) A public sector body shall respond to a request for re-use promptly and in any event before the end of the twentieth working day beginning with the day after receipt.

(2) Where documents requested for re-use are extensive in quantity or the request raises complex issues the public sector body may extend the period for responding in paragraph (1) by such time as is reasonable in the circumstances.

(3) Where paragraph (2) applies, the public sector body shall, before the end of the twentieth working day beginning with the day after receipt, notify the applicant in writing—

(a) That no decision on re-use has yet been reached; and

(b) Of an estimated date by which it expects to respond to the request for re-use.

(4) In this regulation, responding to a request for re-use means—

(a) Refusing the request for re-use;

(b) Making the requested document available to the applicant for re-use; or

(c) Where conditions are to be imposed on re-use pursuant to regulation 12, finalising the offer to the applicant of the conditions on which re-use will be permitted.

Format of documents

11. (1) A public sector body may make a document available to an applicant pursuant to regulation 8(4)(b) or 8(4)(c) in the format and language in which it exists on the date of response to the request for re-use.

(2) Where possible and appropriate, a public sector body shall make a document available for re-use by electronic means.

(3) Nothing in these Regulations shall oblige a public sector body to do any of the following—

- (a) Create or adapt a document in order to comply with a request for re-use;
- (b) Provide an extract from a document where to do so would involve disproportionate effort;
- (c) Continue to produce a certain type of document for the purposes of re-use by another person.

Conditions

12. (1) A public sector body may impose conditions on re-use.

(2) Where conditions are imposed they shall not unnecessarily restrict—

- (A) The way in which a document can be re-used; or
- (b) Competition.

Charging

15. (1) a public sector body may charge for allowing re-use.

(2) The total income from any charge shall not exceed the sum of —

- (a) The cost of collection, production, reproduction and dissemination of documents; and
- (B) A reasonable return on investment.

(3) Any charges for re-use shall, so far as is reasonably practicable, be calculated—

- (a) In accordance with the accounting principles applicable to the public sector body from time to time; and
- (b) On the basis of a reasonable estimate of the demand for documents over the appropriate accounting period.

(4) A public sector body shall not charge an applicant for costs incurred in respect of activities mentioned under paragraph (2)(a) in respect of a request for re-use, if the same applicant had been charged in respect of those same activities by that public sector body for access to the same document under information access legislation.

(5) Where a public sector body charges for re-use, so far as is reasonably practicable, it shall establish standard charges.

(6) A public sector body shall specify in writing the basis on which a standard charge has been calculated if requested to do so by an applicant.

(7) Where a standard charge for re-use has not been established, the public sector body shall specify in writing the factors that will be taken into account in calculating the charge if requested to do so by an applicant.

IFTS Principles

Maximisation

An obligation to allow others to re-use information. The default position should be that information can be re-used unless there are strong reasons (for example personal information) not to allow re-use.

Simplicity

Simple processes, policies and licences.

Innovation

Public sector information holders actively remove obstacles to re-use, and facilitate the development of new and innovative forms of re-use.

Transparency

Transparency of the terms of re-use, including licence terms, where used. There should also be transparency about charges and the details of what information is available for re-use.

Fairness

All re-users must be treated in a non-discriminatory way for same for the same type of re-use. Public sector information holders should not use their market power to compete unfairly by virtue of having produced the information.

Challenge

A robust complaints process to reconsider licensing decisions. The process should include appropriate references to The National Archives, which will investigate any complaints that the public sector information holder cannot resolve to the customer's satisfaction.