

# Procedures for investigating complaints arising under the Re-use of Public Sector Information Regulations 2005

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## Background

1. On 1 July 2005 the Re-use of Public Sector Information Regulations 2005 SI 2005 No 1515 (the Regulations) came into force. These Regulations set out the conditions for the re-use of public sector information: [www.legislation.gov.uk/ukxi/2005/1515/contents/made](http://www.legislation.gov.uk/ukxi/2005/1515/contents/made).

This document describes the Office of Public Sector Information (OPSI) procedures for investigating complaints and is published in accordance with Regulation 19(1) of the Regulations.

2. Operating from within The National Archives, the Office of Public Sector Information (OPSI) is at the heart of information policy, setting standards, delivering access and encouraging the re-use of public sector information.

OPSI provides a wide range of services to the public, information industry, government and the wider public sector relating to finding, using, sharing and trading information.

Within OPSI, Her Majesty's Stationery Office (HMSO) fulfils its core activities including responsibility for the publication of legislation and the management of Crown copyright.

## Purpose

3. The overriding aim of these procedures is to provide an effective complaints process, offering a faster and lower cost alternative to action through the courts.

## Definitions

4. In these procedures the following terms are used:
  - **Complainant:** any re-user or potential re-user that wishes to make a complaint about non-compliance with the Regulations. The complainant may be a public or private sector body or an individual
  - **PSIH:** Public Sector Information Holder. The public sector organisation that has created the information or that has responsibility for allowing its re-use

- **Recommendation:** OPSI's recommended course of action based on its findings as to whether the Regulations have been breached
- **Regulations:** the Re-use of Public Sector Information Regulations 2005 SI 2005 No 1515
- **APPSI Review Board:** a specially constituted board of the Advisory Panel on Public Sector Information (APPSI)
- **APPSI:** The Advisory Panel on Public Sector Information, a non-departmental public body (NDPB) that advises Ministers, the Director of OPSI, the Controller of Her Majesty's Stationery Office (HMSO) and the Queen's Printer for Scotland on public sector information policy
- **HMSO:** Her Majesty's Stationery Office, whose responsibilities include the licensing of Crown copyright material produced by public servants, employed by United Kingdom, England, Wales and Northern Ireland Crown bodies
- **OQPS:** The Office of the Queen's Printer for Scotland, whose responsibilities include the licensing of Crown copyright material produced by public servants in the Scottish administration
- **Working Days:** Monday to Friday, excluding Bank and Public Holidays

## Making a complaint

5. The complainant should make the complaint to the PSIH in the first instance.

If, having exhausted the PSIH's complaints process, the complainant is dissatisfied with the outcome and feels that there are grounds for taking the matter further the complainant may refer the complaint to OPSI.

6. Complaints to OPSI must:
  - be in writing
  - state the nature of the complaint in no more than 2,000 words
  - provide OPSI with a copy of the PSIH's written response to the complaint under Regulation 17(3) where this exists
7. The complainant should also cite the specific provision(s) of the PSI Regulations that the complainant believes the PSIH is not meeting.

8. For a detailed explanation of the coverage of the Regulations see the Guide to applying the Re-use of Public Sector Information Regulations 2005:  
[nationalarchives.gov.uk/documents/information-management/guide-to-applying-the-re-use-of-psi-regulations.pdf](http://nationalarchives.gov.uk/documents/information-management/guide-to-applying-the-re-use-of-psi-regulations.pdf).
9. OPSI will acknowledge receipt of the complaint in writing within three working days.

## Initial assessment

10. OPSI will assess whether the complaint is formally within the scope of the Regulations and will notify the complainant whether it will investigate the complaint within ten working days of receipt.
11. As part of its initial assessment process, OPSI may request information from, or a meeting with, the complainant or the PSIH.
12. OPSI will assess whether the information which is the subject of the complaint falls within the scope of the Regulations. The main exclusions are documents:
  - in which a third party owns relevant intellectual property rights
  - held by PSIHs such as public sector broadcasters, museums, cultural and educational establishments
  - which are produced outside the public task of the PSIH
  - that are exempt under access legislation such as Freedom of Information
13. If the complaint relates to issues such as Freedom of Information or competition policy, OPSI will notify the complainant whom they should contact about their complaint. OPSI has a Memorandum of Understanding with the Office of Fair Trading (OFT: [www.of.gov.uk](http://www.of.gov.uk)) and concordats with the Office of the Information Commissioner (OIC: [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)) and the Office of the Scottish Information Commissioner (OSIC: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)). These set out how the various bodies work together in related areas of policy
14. An important feature of any complaints process is the independence of the person or organisation investigating the complaint.

Therefore, if the complaint concerns the licensing of Crown copyright material by HMSO or OQPS, the complainant will be advised to refer their complaint direct to the APPSI Review Board.

## Investigation

15. Having confirmed to the complainant that it will investigate the complaint, OPSI will send the statement of complaint to the PSIH, inviting the PSIH to submit a response to OPSI.

The PSIH will be required to send this response to OPSI within ten working days and it should be no more than 2,000 words. The response will be copied to the complainant.

16. Once the PSIH's response to the statement of complaint has been received, OPSI will commence its investigation. In some cases, OPSI may require further information and supporting evidence from one or both of the parties. Either party may be interviewed by OPSI.
17. OPSI's investigation will be based on an assessment of whether the PSIH has complied with the Regulations. During the investigation OPSI will review the complaint with reference to the Guide to applying the Re-use of Public Sector Information Regulations 2005.
18. OPSI will assess how long the investigation will take to complete and notify the complainant and the PSIH. This assessment will take into account the complexity of the issues raised.
19. If OPSI is unable to complete the investigation within the estimated timescales, it will notify both parties of the revised timetable.
20. OPSI may consult specialists from other organisations where appropriate. The complainant and the PSIH will be notified if OPSI intends to do this.
21. A complainant may withdraw a complaint at any point by notifying OPSI.

## **OPSI's recommendations**

22. On concluding an investigation, OPSI will prepare a report for publication which will cover the following information:
  - the nature of the complaint
  - the issues put forward by each side
  - OPSI's findings on which part of the Regulations, if any, have not been complied with, together with its reasons
  - OPSI's recommended course of action
23. If OPSI finds that the PSIH has complied with the PSI Regulations it may nevertheless identify some areas where improvement is possible and make suggestions accordingly.
24. The draft report will be sent to both parties to check for factual accuracy. Each of the parties will have five working days in which to respond. A lack of response will be taken by OPSI to indicate that the parties are content as to factual accuracy. OPSI will consider suggested revisions to the report, making any amendments that it considers necessary. The final decision will rest with OPSI.
25. The final version of the report will be issued to each of the parties and published on the OPSI website. Subject to commercial confidentiality, OPSI also reserves the right to publish the statement of complaint and the PSIH's response to it.
26. The complainant and the PSIH will be informed that they have the option of applying to the APPSI Review Board for a review of OPSI's recommendations.

## **Meeting the recommendations**

27. OPSI will set deadlines for its recommendations to be implemented and will monitor compliance with them.
28. After the deadlines have expired, OPSI will publish a progress report on what action the PSIH has taken to address OPSI's recommendations.

If the PSIH has not taken sufficient action to comply with the Regulations, OPSI may refer the matter to a Minister within the Ministry of Justice. This could result in the Minister in

question writing to the head of the PSIH, the Cabinet Secretary for Finance and Sustainable Development in the case of the Scottish Executive, the First Minister in the case of the Welsh Assembly Government, the First and Deputy First Minister in the Northern Ireland Administration or the appropriate Ministerial colleague in the case of a central government department, requesting that the PSIH implement OPSI's recommendations.

29. In exceptional circumstances, and following discussions with the appropriate Ministers, OPSI may consider it necessary to revoke in full or in part a delegation of authority for Crown bodies.

Additionally, where there have been flagrant or systematic breaches of the PSI Regulations, OPSI may recommend to the parent department that a PSIH is divested of its refined information operation.

## **Other action**

30. The complaints procedure does not prevent either party from having recourse to the courts, or prevent parties from referring issues to other regulatory bodies at any time, although OPSI will not actively investigate a complaint while it is the subject of a current judicial process.

OPSI's recommendations may be used as evidence in any subsequent action, including application to the APPSI Review Board or action taken through the courts. OPSI may make available submissions produced by both parties and notes of any discussions within OPSI as evidence in any subsequent legal proceedings.

## **Confidentiality**

31. OPSI will respect the confidentiality of all supporting papers and documents. OPSI will store all documents in its possession securely and will not divulge the content of any documents identified as confidential to any other party, except where legally obliged to do so or by the express permission of the owner.

## **Complaints and requests for review submitted to the APPSI Review Board**

32. Where either party is dissatisfied with any recommendations made by OPSI, it may request that these recommendations be reviewed by the APPSI Review Board.
33. The APPSI Review Board will only generally consider investigating a complaint where:
  - a complaint relates directly to OPSI
  - a complaint relates to the licensing activity of HMSO or OQPS
34. The APPSI Review Board will consider a request for a review where OPSI has investigated a complaint, but one or more parties involved are dissatisfied with any of OPSI's recommendations.

## **Further information**

Please contact:

Office of Public Sector Information  
The National Archives  
Kew  
Richmond  
Surrey  
TW9 4DU

Online contact form: <http://www.nationalarchives.gov.uk/contact/contactform.asp?id=8>

Telephone: Tel: +44 (0) 20 8876 3444 extension 2360