

**A Review of the Office of Public Sector Information's procedures
employed for the investigation of complaints arising under the
Re-use of Public Sector Information Regulations 2005**

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Introduction

1. The **Re-Use of Public Sector Information Regulations 2005**, Statutory Instrument 2005 No.1515 (the Regulations)¹ came into force on 1st July 2005. The primary aim of the Regulations is to maximise the re-use of public sector information and stimulate the economy. Public Sector Bodies have been consistently encouraged to enable re-use of their information and the Regulations are designed to establish a framework and define the conditions for the re-use of public sector information in the UK.

2. The Regulations also contain procedures for dealing with complaints against a public sector body, the details of which are:

Internal complaints procedure

17. (1) *A public sector body shall establish an internal complaints procedure for determining complaints relating to its actions under these Regulations.*

(2) *Where a person believes that a public sector body has failed to comply with any requirement of these Regulations, he may complain in writing to the public sector body in accordance with its internal complaints procedure.*

(3) *A public sector body shall determine any complaint made under paragraph (2) within a reasonable time and thereafter notify the person of its determination without delay.*

(4) *Notification under paragraph (3) shall be in writing and give reasons for the determination.*

3. Where a satisfactory resolution is not achieved the Office of Public Sector Information (OPSI), part of The National Archives, is specifically tasked by the Regulations with the investigation and arbitration of complaints, the details of which are:

Complaints to the Office of Public Sector Information

18. (1) *Where a person has exhausted the procedure established under regulation 17(1) in respect of any complaint made under regulation 17(2) or where the public sector body has failed to deal with a complaint made under regulation 17(2) within a reasonable time, the person may refer that complaint to the Office of Public Sector Information.*

(2) *Any complaint referred to the Office of Public Sector Information shall:*

(a) *Be in writing;*

(b) *State the nature of the complaint; and*

(c) *Include a copy of the written notification under regulation 17(3) where one exists.*

¹ <http://www.legislation.gov.uk/uksi/2005/1515>

(3) Where a body specified in paragraph (4) is the subject of a complaint under regulation 17(2) and a person has exhausted the procedure established under 17(1) in respect of that complaint, or where the specified body has failed to deal with a complaint made under regulation 17(2) within a reasonable time, the person may refer that complaint to the Advisory Panel on Public Sector Information.

(4) The bodies specified for the purpose of paragraph (3) are:

- (a) The Office of Public Sector Information;*
- (b) Her Majesty's Stationery Office; and*
- (c) The Office of Queen's Printer for Scotland.*

(5) Where paragraph (3) applies a person shall comply with paragraph (2) as if the reference to the Office of Public Sector Information were a reference to the Advisory Panel on Public Sector Information.

4. In accordance with r.19 (1) of the Regulations OPSI established a formal complaints process in July 2005. This process was reviewed and revised in July 2007. Since the introduction of the Regulations OPSI has dealt with twenty eight complaints.

5. In November 2010, after 5 years of operation of the Regulations, and at a time when the European Commission had initiated a consultation on the PSI Directive which the Regulations implement, OPSI commissioned this external review of the practices and process employed in investigating complaints under the Re-Use of Public Sector Information Regulations 2005. As a member of APPSI with no prior involvement in the APPSI complaint Review Board role, I carried out the review. The objective of the review was to undertake a comprehensive investigation of the:

- Complaints process,
- Practices employed, and
- Assess the level of performance achieved,
- Considering fitness for purpose and benefits realised, and
- Present observations and recommendations in a written report.

6. OPSI also administers the Information Fair Trader Scheme (IFTS)², which sets and assesses standards for public sector bodies. The scheme accredits its members to a high standard of information trading based on the principles of Maximisation, Simplicity, Innovation, Transparency, Fairness and Challenge. It requires them to encourage the re-use of information and reach a standard of fairness and transparency. OPSI administers a separate process for investigating complaints under the Information Fair Trader Scheme (IFTS). The IFTS complaints process has been excluded from this study.

² <http://www.nationalarchives.gov.uk/information-management/ifts.htm>

Complaints Process

7. OPSI last published its procedures for considering complaints under r.18 (1) of the Regulations in July 2007. This documented process is available to the general public online³ on The National Archives website. A management process diagram of this complaints process is described in, Annex A, Fig.1.

8. The Regulations propose a three stage escalation process for the scrutiny, consideration and resolution of complaints:

- Stage One: Ownership, the originating public sector body,
- Stage Two: Ownership, Office of Public Sector Information,
- Stage Three: Ownership, Advisory Panel on Public Sector Information

9. Based on the evidence from the twenty eight complaints processed to date (complaints being prospective complaints lodged with OPSI that may be subject to the PSI Regulations), together with the three detailed case studies provided to the complaint process investigation, the escalation processes appear to work well. They motivate the originating public sector body at Stage One to seek an early and mutually agreeable solution, where possible to minimise further conflict and administrative effort. Stage Two provides OPSI with a sound mechanism for co-operation, impartial investigation and consideration together with a basic compliance process to determine whether its recommendations have been implemented by the originating public sector body. While at Stage Three the Advisory Panel on Public Sector Information (APPSI) ensures independent oversight and an impartial Review Board providing assurance for all parties.

10. The Regulations state clearly that a complaint may only be escalated to the next stage once the previous stage has been exhausted. However in a number of cases complainants have recorded their complaint directly with OPSI before the stage one investigation and/or consideration had been completed. Whilst this is at odds with the designated process, this early engagement by OPSI often promotes a successful outcome and has frequently proved beneficial, enabling mediation and an early resolution without having to result in a formal Stage Two investigation.

11. Whilst the present process works well it is difficult to assess satisfactory closure of a complaint from the complainant's perspective. The output of the OPSI process generally takes the form of a report, which may provide an adjudication, clarification and/or recommendations for change aimed at the originating public sector body. However, while they can bring the matter to the attention of Ministers, delivery of the solution is outside the authority of OPSI who are not empowered to enforce their decisions.

12. Legislation places no obligation on the public sector body to implement the OPSI recommendations. Although its current procedures make reference to publishing a progress report, OPSI should consider how it may formalise and strengthen the reporting and compliance process, perhaps by adopting compliance practices similar to the OGC Gateway process. OPSI recommendations should be copied to the public sector body's Accounting

³ <http://www.nationalarchives.gov.uk/documents/complaints-process.pdf>

Officer, requesting an action plan, timetable for implementation and periodic progress reports, ensuring that the respective public sector body's self-regulation process is visible and accountable at the highest level.

13. The review of the present process has identified two key weaknesses. These are:

- (1) the ability for OPSI to enforce its recommendations with the originating public sector bodies, and
- (2) there is little or no evidence to demonstrate the level of satisfaction achieved by the OPSI complaints process with the complainant and/or the participants.

Recommendation 1

Establish a stronger formal reporting process involving the public sector body's Accounting Officer requiring an action plan and timetable for implementation of OPSI recommendations.

Recommendation 2

Establish a complainant satisfaction feedback process to enable performance and customer satisfaction to be better assessed and monitored.

Practices Employed

14. The OPSI complaints process is operated by a small team, who investigate complaints related to both the Regulation and IFTS. This task forms only part of their normal duties. The nature of their other duties qualifies them to advise, investigate and adjudicate on complaints related to the Regulations. The small number of complaints submitted to OPSI annually justifies this approach. However while the resources deployed appear adequate for the present task, the situation should be kept under review and it may be necessary to reconsider this approach if the volume and/or complexity of the complaints significantly increase.

15. The OPSI Stage Two complaints process employs a simple filter, a preliminary assessment and, if necessary, a formal Initial Assessment, to check jurisdiction, non-compliance, and provide clarification where necessary. To date this filter has enabled 64% of complaints to be resolved at this initial stage. The nature of some 'complaints' from re-users of public sector information are enquires seeking advice and/or clarification of the Regulations. OPSI staff are available to answer telephone enquires relating to the Regulations and the complaints process. When considering the jurisdiction of a complaint OPSI staff may confer with the appropriate authorities to establish relevance and responsibility and seek a prompt resolution to an enquiry.

Customers' Perspective

16. The Regulations specifically states that complaints should be referred to the **Office of Public Sector Information (OPSI)**. Since the amalgamation of OPSI with The National Archives, identity and visibility of OPSI has been obscured. This presents a confusing picture to the citizen or organisation unfamiliar with dealing with government.

17. The National Archives website has been developed to a high standard but does not overtly acknowledge OPSI as a subsidiary or constituent part. An internal search for OPSI within The National Archive websites reveals the complaints procedure and past reports but lacks explanation of the roles and responsibilities of The National Archives for OPSI in relationship to the Regulations. External queries from the internet regarding the Regulations and/or OPSI invariably point to pages within The National Archives website.

18. The procedures published by OPSI for considering complaints under r.18(1) of the Regulations in July 2007, were last updated for revised contact details in September 2008 after its change of office location, but, apart from a brief reference in paragraph 2 of the procedures, do not acknowledge the relationship with The National Archives. This same document also provides the Enquiries Number for further information regarding the Regulations but this is not overtly apparent.

Recommendation 3

Provide a clear statement linked to 'OPSI' clearly establishing its relationship with the National Archives and the Regulations, and any other relevant legislation on The National Archives website.

Recommendation 4

Review and redraft the procedures for considering complaints under r.18(1) of the Regulations to reflect the change in the status of OPSI and any other changes considered necessary as a result of this report.

Mediation

19. Early engagement with OPSI has proved beneficial in a number of the cases where OPSI has been able to clarify the Regulations and provide advice on the complaints process and reassure potential complainants. Many re-users of public sector information are reluctant to lodge a formal complaint against a public sector information holder because they feel that it could affect their future business relationship. In a number of instances, to maintain momentum, OPSI has proposed brokered discussions or formal mediation at an early stage. However in acting as a catalyst to achieve an early solution OPSI must ensure that this does not compromise its role as the independent adjudicator charged with the investigation and pronouncement on the legitimacy of a complaint.

20. Mediation provides a low cost and speedy alternative to going down the formal complaints path or going through the courts. Mediation is an informal process where parties in a dispute come together and, with the help of the mediator, reach a settlement. The National Archives has a number of Centres for Effective Dispute Resolution (CEDR) accredited mediators who can assist disputing parties to resolve disputes.

21. The Regulations specifically require OPSI to consider and investigate complaints and to pronounce on its findings. In seeking to engage in early adjudication and mediation it has expanded its role to one of an added service provider in promoting the re-use of public sector information. Whilst this is in the spirit of the Regulations, OPSI must ensure that it approaches any expansion of role by first establishing a clear separation of task so that it can maintain a position of impartiality and independence to secure the confidence and respect of both sides in the dispute.

Observation 1

OPSI must remain vigilant in the development of its wider role and not compromise its position of impartiality, integrity and independence when considering complaints under r.18 (1) of the Regulations.

Performance Achieved

22. The UK was an early adopter of the Directive 2003/98/EC of the European Parliament and of the Council of 17th November 2003 on the re-use of public sector information. The UK enabling legislation, the Regulations, came into effect on 1st July 2005. Since then, OPSI has considered twenty eight complaints submitted under the Regulations. A simple analysis of these complaints shows that:

- eighteen complaints (64%) were resolved or did not formally proceed beyond an initial assessment,
- resolution time from complaint to closure varied from 1 to 325 calendar days,
- the mean time to undertake an initial assessment was 7.4 calendar days,
- OPSI currently investigates a mean of five complaints per year; 2006 [1], 2007 [8], 2008 [6], 2009 [6], 2010 [6],
- one complaint was escalated to Stage Three and referred to the APPSI Review Board under r.18 (3) of the Regulations on 13th July 2006. APPSI's final report was published on 30th April 2007
- presently one complaint (3.6%) remains unresolved after six months.

23. The numbers of complaints received annually have remained relatively constant throughout the last five years. Based on available evidence one can only speculate on why this is so and why the numbers of complaints have not risen with the increase in the number of licences issued by public sector bodies. This may well reflect improvements in the flexibility and quality of the licensing, which was in great measure influenced and refined based on evidence from the Stage One and Two complaints process.

24. Analysis of the complaints processed to date shows that 64% were resolved by OPSI within 7.4 calendar days, while the remaining 36% were subject to a full investigation involving protracted dialogue with the complainant and the public sector body to achieve closure. The lack of formal 'customer' feedback, see Recommendation 2, makes assessment of customer satisfaction and closure difficult. However based on the data provided the resolution of two thirds of complaints within a calendar week is commendable.

25. The Regulations place time constraints on public sector bodies to provide the initial information in response to a complaint, '*within a reasonable time and thereafter notify the person of its determination without delay*'. However, while there are fixed timescales at the start and end of the complaints process, the time constraints placed on OPSI for carrying out the process as whole could be more explicit. To demonstrate performance and set realistic expectations for participants, OPSI should consider introducing performance measures based on the time to complete key tasks within the Stage Two consideration and investigation process. Based on operational experience to date, a time window to complete an investigation could be assessed.

Recommendation 5

Agree and introduce a set of simple performance measures for the Stage Two OPSI complaints consideration process.

Fitness for Purpose

26. Analysis of the evidence suggests that overall the three stage complaints process is operating effectively. Functionally the process has been operationally tested at each stage. The bulk of disputes and complaints are resolved by the Stage One internal complaints procedure. OPSI has considered twenty eight complaints at Stage Two, one is still unresolved, and only one has subsequently been referred to APPSI at Stage Three.

27. Closure remains an issue as there is little formal evidence to indicate the level of satisfaction achieved by the claimant, or indeed either party, in the process, although there have been no specific challenges to the fairness or impartiality of adjudication at Stage Two or Three. The one complaint that was escalated to Stage Three was referred to APPSI by both parties as part of an on going dispute.

28. Analysis of the complaints considered by OPSI at Stage Two revealed that in general terms:

- Seven complaints were worthy of further formal investigation,
- Fourteen were referred back to the Public Sector Body or the complainant withdrew, and
- Seven were considered to be outside the scope of the Regulations.

29. The outcome of OPSI consideration was not always as clear cut as paragraph 28 may suggest and OPSI invariably proposed recommendations for improvement involving both parties. OPSI engagement with the parties during the initial investigation of the complaint has frequently resolved the issues by providing clarification and/or simple alternatives resulting in the complainant not proceeding further.

30. The primary aim of the Regulations is to maximise the re-use of public sector information and simulate the economy. Public Sector Bodies have been consistently encouraged to enable re-use of their information and unsurprisingly the complaints considered at Stage Two by OPSI reflect the breadth and diversity of the public sector. Inspection of these complaints against public sector bodies reveals no major surprises, reflecting market demand and social change. However it is noteworthy that:

- Eight complaints were related to Ordnance Survey, albeit only one was logged in 2010 (28.6%),
- Four complaints were related to local authorities (14.3%),
- Two complaints were related to devolved authority organisations (7.1%),

Recommendation 6

To increase awareness of the type and nature of complaints, OPSI should publish and maintain a table of past complaints, identifying the type of public sector body, nature of the complaint and the outcome.

31. The close engagement of the OPSI policy team in the complaints process has provided valuable insight in to the day to day operation concerns facing the participants involved in public sector information re-use. This insight has significantly influenced the development and introduction of the UK Government Licensing Framework (UKGLF). This provides a policy and legal overview for licensing the re-use of public sector information both in central government and the wider public sector. It sets out best practice, standardises the licensing principles for government information and recommends the use of the UK Open Government Licence (OGL) for public sector information.

Recommendation 7

To increase awareness of the licensing and complaints process OPSI should compile and maintain a list of Frequently Asked Questions (FAQ) on The National Archives website.

Conclusions

32. This report contains seven recommendations and one observation. All but one is within the power of OPSI and The National Archives to implement. The issues and recommendations have been addressed and ranked in order of importance.

33. Recommendation 1 will require the consent and co-operation of other public bodies and whilst it may be achieved by collaboration aimed at the application of best practice, ultimately it may require legislation.

34. In conclusion the process is working, fulfilling its designated function. The introduction of a few improvements will ensure that it works more effectively, and, more importantly perhaps, is seen to do so.

Summary of Recommendations and Observations

Recommendations

1. Establish a stronger formal reporting process involving the public sector body's Accounting Office requiring an action plan and timetable for implementation of OPSI recommendations.
2. Establish a complainant satisfaction feedback process to enable performance and customer satisfaction to be better assessed and monitored.
3. Provide a clear statement linked to 'OPSI' clearly establishing its relationship with the National Archives and the Regulations, and any other relevant legislation on The National Archives website.
4. Review and redraft the procedures for considering complaints under r.18(1) of the Regulations to reflect the change in the status of OPSI and any other changes considered necessary as a result of this report.
5. Agree and introduce a set of simple performance measures for the Stage Two OPSI complaints consideration process.
6. To increase awareness of the type and nature of complaints OPSI should publish and maintain a table of past complaints, identifying the type of public sector body, nature of the complaint and the outcome.
7. To increase awareness of the licensing and complaints process OPSI should compile and maintain a list of Frequently Asked Questions (FAQ) on The National Archives website.

Observation

1. OPSI must remain vigilant in the development of its wider role and not compromise its position of impartiality, integrity and independence when considering complaints under r.18 (1) of the Regulations.

ANNEX A - OPSI Re-Use of Public Sector Information Regulations 2005 Complaint Process, Fig. 1

