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

PinPoint Information Limited and The Coal Authority

December 2014
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Executive Summary

1. This complaint was brought under both the PSI Regulations (the Regulations) and the Information Fair Trader Scheme (IFTS). OPSI finds that the Regulations were not applicable to this complaint as The Coal Authority operated at all times within its published public task, which PinPoint Information Limited (the Complainant) has challenged. OPSI concludes that the provision of CON29M reports should be considered to be part of the Public Sector Body’s (PSB) public task. The Complainant wished to produce mining reports similar to those produced by the PSB, which constitutes a use and not a re-use under Regulation 4.

2. We do make recommendations under the IFTS. The PSB, under the principles of maximisation and fairness, should encourage the re-use of its information, including supply of CON29M substitutes. Although it is acceptable for a PSB not to allow competition against its public task, the public task needs to be clearly defined, reasonable and allow fair competition. Further recommendations are made regarding transparency.

Background Information

3. The Office of Public Sector Information (OPSI) received a complaint dated 3 February 2014 from PinPoint Information Limited (the Complainant) against The Coal Authority (the Public Sector Body (PSB)). This complaint was made under both the Re-use of Public Sector Information Regulations (SI 2005 No. 1515) (the Regulations) and the Information Fair Trader Scheme (IFTS).

4. Investigation of the complaint was placed on hold on 20 March 2014 with the agreement of the parties while the Complainant awaited the outcome of a complaint against the PSB under the Freedom of Information Act and considered the impact of recent EU case law. The Complainant subsequently decided to proceed with the complaint and so OPSI invited the PSB to respond to the complaint by 29 July 2014.
5. During the course of the investigation, and in seeking to summarise the issues raised in the Complaint, OPSI has used the statement of complaint, a letter from the PSB to the Complainant dated 13 July 2012, the PSB’s Corporate Plan, a letter from the PSB to the Complainant dated 20 November 2014, and email correspondence from the Complainant and PSB to OPSI. OPSI felt it had sufficient evidence and did not seek meetings with either party.

The role of OPSI in Investigating Complaints under the Regulations

6. OPSI is responsible for investigating complaints under the Regulations for failure to comply with any requirement of the Regulations. The procedure for investigating complaints under the Regulations is on The National Archives website\(^1\).

Summary of the PSI Regulations


8. The main aim of the Regulations is to maximise the re-use of public sector information and to stimulate the economy. Within the terms and the spirit of the PSI Regulations, a PSB is expected to encourage re-use of its information. Although the Regulations impose no obligation on a PSB 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 PSB should:

- Publish a list of the main documents available for re-use
- Respond promptly to requests for re-use

\(^1\) http://www.nationalarchives.gov.uk/documents/psi-complaints-procedure.pdf
• 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 PSB’s actions and this should be made clear in the internal procedures

OPSI’s role under IFTS

9. IFTS was introduced in 2002\(^2\). The scheme’s purpose is to accredit its members to a high standard of information trading and to monitor their information trading activities. Through the IFTS Principles, the scheme sets a higher standard than the Regulations, for example regarding the maximisation of the re-use of information.

10. To maintain full IFTS membership, members undergo periodic on-site verification audits. Where re-users feel a member is in breach of the IFTS Principles, a complaint can be made through OPSI.

11. The IFTS Principles are as follows:

- **Maximisation**: An obligation to allow others to re-use information. The default position should be that information can be re-used unless there

\(^2\) following the Cross-Cutting Review of the Knowledge Economy
are strong reasons (for example that the information constitutes 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 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.

**The Complaint**

*The Complainant*

12. PinPoint Information Limited is an information services provider.

*The Public Sector Body (PSB)*
13. The Coal Authority is a non-departmental public body responsible for: licensing coal mining operations in Britain; administering coal mining subsidence damage claims; dealing with property and historic liability issues and providing access to information on coal mining.

**Context of the Dispute**

14. The Complainant is a private sector organisation specialising in the provision of property search services. The complaint itself relates to the PSB’s suspension of a licence permitting commercial re-use of certain information. The PSB licenses commercial re-use of its Con29 data via a commercial licence; any other re-use of this data is allowed under the Open Government Licence. This suspension followed from the PSB allegation that the Complainant had breached the terms of the agreement. The alleged breach related to anticipated use of information for a purpose conflicting with the PSB’s public task and by a company other than the one licensed to re-use the information.

15. The PSB was the subject of a previous complaint made by the Complainant in 2011 relating to licensing issues which took place in 2010. OPSI investigated that complaint and published a report in October 2011\(^3\). That complaint related to the PSB’s refusal to license the re-use of information for a purpose it believed would conflict with its public task. One outcome of OPSI’s complaint investigation was the publication of a statement of public task by the PSB.

16. The documents requested for re-use in the present complaint consist of coal mining abandonment plans and a range of other ‘silof datasets containing related mining safety information. Some of these datasets were first requested in 2011.

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Issues raised in the Complaint

The Complainant

17. The issue of public task is core to the complaint. The Complainant alleges that PSB’s public task was inaccurately drawn, and was redefined without discussion with stakeholders or providing any opportunity for challenge. Public task is considered under both PSI and IFTS.

18. The complaint made alleges that the PSB’s actions have breached the Regulations as follows:

- Issue 1 – that the PSB did not make its reason for the refusal of the request for re-use clear (Regulation 9)
- Issue 2 – that the PSB’s terms of re-use unnecessarily restrict the Complainant’s re-use and also restrict competition between re-users. (Regulation 12)
- Issue 3 – that the PSB discriminates against re-users. (Regulation 13)
- Issue 4 – that the PSB has an exclusive re-user arrangement with itself and other third party companies. (Regulation 14)

19. The Complainant also sets out a number of areas where it believes that the PSB has not acted in accordance with the Principles of the Information Fair Trader Scheme, of which the PSB is a member. There were 15 points made in the original complaint to the PSB, dating from October 2013, which we have summarised as follows:

- Issue 5 – that the PSB’s default position is that information can only be used with strong reason. The process of doing business with the PSB was made unnecessarily difficult in order to disrupt potential re-use, contrary to the Principle of Maximisation.
- Issue 6 - that the PSB has breached the Fairness Principle by maintaining favourable agreements with other market participants. Other re-users, including the PSB, have been allowed to replicate the CON29M.

- 8 -
• Issue 7 - that the PSB terminated the 12 July 2012 agreement despite the fact that essential data was missing and out of date, the complainant had not yet entered the marketplace and in fact the PSB is in breach for not supplying the data. This is in breach of the Maximisation Principle.

• Issue 8 - that the terms imposed by the PSB unnecessarily restrict the way information can be used and is contrary to the Maximisation Principle.

The PSB’s response

20. The PSB has responded to the statement of complaint by providing a copy of its future corporate strategy. This outlines actions which, if taken, would reduce the need for such challenges in future, for instance by removing the ‘non-commercial only’ clause for a range of spatial data and providing CON29M answers for others to include in their own environmental reports. The PSB did not respond specifically to the issues raised in the complaint document put to it by OPSI but has provided information when requested by OPSI to explain its position on specific matters raised in this complaint.

21. The PSB’s published 2014/2015 Corporate strategy document is of assistance and of note with respect to any recommendations or best practice advice made in this report. In particular the strategy suggests the PSB will be engaged in a wide-ranging reform of how its information services are made available for re-use. Some of these existing plans may, if implemented, ameliorate any areas for improvement identified below.

OPSI’s Investigation

22. There had been a previous complaint from the Complainant in 2011 which covered some similar issues. However, we considered that there
was a sufficient difference between the two, particularly as regards public task, for this new complaint to be investigated. Also, a significant period of time had elapsed and there have been policy developments in this field.

Public Task

23. The issue of the PSB’s public task runs through almost all areas of this complaint. Therefore the following paragraphs set out a general analysis of the issues. The points will be referred to when discussing alleged breaches of both the Regulations and IFTS Principles.

24. The mining documents requested for re-use are maintained and developed as part of the PSB’s public task. The PSB states that it supplies the information available for re-use in the format of the CON29M and that production of the CON29M is an activity falling within its public task. The underlying data that makes up the CON29M is not available separately for re-use. As such, the PSB argues that use of the CON29M does not constitute re-use within the meaning of the Regulations. Re-use is defined in regulation 4 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’. OPSI considered this point in the course of the 2011 complaint investigation and agrees that the provision of CON29M reports is part of the PSB’s public task.

25. The PSB’s published public task statement has been consistent with respect to its position on re-use for the relevant purposes throughout the relevant period covered by this complaint and we note in particular that this description of its public task was published before the licence agreement which is the subject of the present complaint.

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26. The Complainant draws attention to the statutory footing of the public task statement, questioning whether the Coal Industry Act 1994 provides as extensive justification as is argued by the PSB. OPSI notes that public task is not solely defined by statute, but by other binding rules and common administrative practice. In addition, the PSB’s business model is to recover its costs through charges for the provision of mining information.

27. It follows from this that any request to exploit this information for an equivalent purpose will be a use, not a re-use, of the information and therefore fall outside the scope of the Regulations.

28. The evidence considered in the course of our investigations indicates that the Complainant had previously stated its ambition to use PSB material for purposes very closely related to or resembling those of a CON29M. It appears the Complainant again described its proposed product as a potential substitute for the CON29M to the PSB during negotiations leading up to the agreement. The Complainant should therefore have anticipated the high likelihood that the proposed re-use would in fact be similar to the PSB’s public task at that point, leading to a refusal on the grounds that it did not constitute re-use. Similarly, the Complainant would have been aware that the terms of the licence on offer would not have accommodated any use which was similar to the CON29M.

29. The Complainant was encouraged and did supply a mock up of its intended product to the PSB, despite reservations that this could be used to competitive advantage by the PSB. The Complainant argues that there was a difference between its product and that of the PSBs, for instance the inclusion of brine data. However, the core product is similar and we find that the differences were not significant enough to be classed as re-use of information.

30. As there are such close similarities between the Complaint’s proposed product and the CON29M, we find that the Complainant’s proposed product would not be a re-use of CON29M reports. We therefore find that the Regulations are not engaged and that the issues raised by the
Complainant under Regulations 9, 12, 13 and 14 (issues 1-4 above) should not be investigated further under the Regulations. We consider below whether the points raised in issues 1-4 merit consideration under the Information Fair Trader Scheme.

31. **Recommendation 1:** as there is no re-use under the Regulations the complaint is not upheld and no further action is required.

**OPSI's Assessment Under IFTS**

32. Whilst the Regulations are not engaged on this occasion, the Complainant has made a number of complaints that the PSB is not adhering to the principles of the Information Fair Trader Scheme. OPSI comments on these points below.

*Maximisation*

33. Issue 8 relates to the unnecessary restrictive terms of re-use. Under the Principle of Maximisation, it would be expected that a re-user would be able to find an acceptable set of terms and conditions for re-use. OPSI's assessment is that the PSB's policy at the time did not facilitate Maximisation of the value of the Documents. It is the case that the PSB did not permit use of the documents for the purpose of creating products which were similar to a CON29M report. **Recommendation 2:** that in order to maximise re-use and allow fair competition, the PSB should allow the re-use of its information for any reasonable purpose, including supply of CON29M substitutes. It is acceptable for a PSB not to allow competition against public task activity. However, it needs to ensure public task activity is clearly defined.

*Transparency*

34. The Complainant alleges that the public task was redefined and inaccurately drawn without providing the opportunity for challenge which constrained fair trading. The Complainant states that the definition of public task has since been challenged on no less than three occasions. Although the PSB did publish its statement and did seek feedback from
some stakeholders, OPSI included, it is good practice to give the opportunity for re-users to input as the public task is drawn up. **Recommendation 3:** We recommend that the PSB provides a forum for re-users to submit feedback on the public task, and that the public task statement is reviewed at least every 3 years.

35. Under Issue 5, the Complainant states that the PSB has acted to frustrate its commercial aspirations, contrary to the IFTS Principles. The core of this complaint relates to the significant lapse of time between the date of the agreement in July 2012 and the notice of termination in October 2013. The request for a mock-up of the end product could have been made earlier. Doing so could have provided a swifter process for the re-user, even if the outcome remained the same.

36. However, the potential outcomes under alternative courses of action should also be considered. If the PSB had rejected the initial application outright on the basis only of the product description included in the contract, then they would have been open to an accusation of too expansive an interpretation of their public task. If the PSB had requested a mock-up very soon after the contract had been agreed then the Complainant might have had cause to complain that insufficient development time had been given.

37. **Recommendation 4:** the PSB should ensure that decisions on re-use are not unnecessarily delayed and the re-user is kept informed of progress throughout the process.

38. **Recommendation 5:** the PSB should make its reasons for refusing re-use clear to improve transparency.

39. Issue 7: the Complainant states that the PSB was unclear in its termination letter of 10 October 2013 as to the nature of the breach and that it did not provide a route to remedy the breach prior to termination.

40. OPSI agrees with the Complainant that the correspondence regarding the termination could have provided greater clarity as to the nature of the breach. Good practice would also normally suggest that the PSB should have given the Complainant an opportunity to remedy the breach. The
PSB did, however, offer to continue working with the Complainant albeit on different terms. Also, OPSI notes that the nature of the breach relates to the fundamental purpose of the product, which suggests that the breach would be unlikely to have been capable of being remedied.

41. **Recommendation 6**: that under the IFTS Principles of Fairness and Transparency, where the PSB refuses or terminates agreements, a full explanation of the anticipated or actual breach is provided to the re-user. The re-user should also be given the chance to respond.

*Fairness*

42. Issue 6: The Complainant alleges that the PSB is maintaining favourable agreements with other market participants and that other re-users, including the PSB, have been allowed to replicate the CON29M. OPSI found no evidence that this is the case. The Complainant has been offered the same access terms as other market participants. The PSB itself is supplying the CON29M product as part of its public task and so there is therefore no discrimination or exclusive arrangement.

**Role of APPSI Review Board**

43. APPSI has a role in reviewing any recommendations made under the PSI Regulations, in accordance with Regulation 20 of the PSI Regulations, “Where the person [the Complainant] or the public sector body is dissatisfied with any recommendation made under regulation 19(3) he may request for it to be reviewed by the Advisory Panel on Public Sector Information5.” The role does not extend to IFTS.

5 [http://www.nationalarchives.gov.uk/appsi](http://www.nationalarchives.gov.uk/appsi)
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<th>No.</th>
<th>Recommendation</th>
<th>Deadline</th>
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<td>Not Applicable</td>
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