

The United Kingdom Report on the Re-use of Public Sector Information 2013-2015

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Introduction

The UK is widely acknowledged as a leader in both Open Data and the re-use of Public Sector Information (PSI). Version 3 of the W3C *Open Data Barometer* placed the UK in first place in the world rankings in April 2016¹. The UK was also one of the first EU member states to transpose the revised PSI Directive in July 2015. PSI provides the legal underpinning for open data policies, portals and programmes.

During the period covered by this report, the UK progressed from the EU adoption of a revising Directive 2013/37/EU to full domestic transposition. The Re-use of Public Sector Information Regulations 2015² were made by the then Justice Minister, Dominic Raab on 25 June 2015 and came into force in time for the Directive deadline on 18 July 2015. Some of the characteristics of the revising Directive showed the influence of previous UK innovation, while others required more change. This was set against the backdrop – during the 2010-15 Parliament – of a concerted push by the previous Government to propel and enhance open data delivery by the UK to stimulate economic growth and to increase public sector transparency. The Government has from May 2015 adopted a more holistic approach to its data programme, now led by the Government Digital Service to link ‘digital first’ service transformation to the underlying data infrastructure including sharing and re-using data assets.

This report completes the record for transposition, set against the backdrop of contemporaneous activities undertaken by The National Archives and colleagues in other public bodies.

SEPTEMBER 2016

¹ <http://www.opendatabarometer.org/>

² SI 2015 No. 1415, which consolidates the text of the 2005 SI with the changes required by the amending Directive <http://www.legislation.gov.uk/uksi/2015/1415/contents/made>

Policy Landscape

The relationship with open data has been noted. During the reporting period, PSI was keyed into cross-governmental governance groups as they evolved under ministerial leadership. The principal driving force prior to the 2015 general election was the then Minister for the Cabinet Office, Francis Maude.

The other jurisdictions of the UK have their own access to information regimes and slightly different devolution arrangements with the UK. This issue is discussed in more detail in the transposition *Governance* section.

Public Sector Transparency Board

During the 2010 – 15 Parliament, the Government's transparency policy was under the governance of a collaborative Transparency Board under the chairmanship of the Minister for the Cabinet Office³. PSI policy interests including progress on transposition were reported and tracked through the Board, membership of which included the Controller of Her Majesty's Stationery Office (HMSO). Progress on PSI transposition and open licensing issues supported the open data remit of the Board. Since transposition, the open data leadership and dialogue started by the Board continues through the Ministerial Steering Group and the Data Leaders' Network convened by the Government Digital Service

Open Government Partnership

In November 2013, the UK chaired and hosted the G8 Summit, incorporating the Open Government Partnership Summit. A new, second, National Action Plan was launched at the event, including a plan to transpose the then new PSI amending Directive in advance of the European deadline of 18 July 2015⁴. During the event the UK political cycle

intervened imposing restrictions on policy announcements from March 2015 and pushing legal transposition back until after the formation of the new Government following the general election on 5 May 2015. As a result, transposition met but did not surpass the EU requirement.

Data Sharing

PSI includes generic data sharing, and while it does not interfere with access regimes, nor the protection of personal data, it does rely on awareness of the information landscape as a whole. Today's personal data may be anonymised or, with time, become tomorrow's PSI. To that end the Information Policy team participated actively in the Cabinet Office-led data sharing initiative that examined the barriers and how they might be eased. The Information Policy team proceeded to engage with civil society organisations in an open policy making process to build a consensus for future legislative action. The team was able to input the long term perspective of The National Archives' functions and those of the Controller of HMSO into the government discourse as well as a perspective derived from its position in leading information management in government.

Environment Agency

The PSI held across government naturally varies in terms of interest and exposure. In the reporting period, several prominent PSI holding organisations made major changes to their business models with implications for their PSI.

In July 2015, the then Secretary of State for Environment, Food and Rural Affairs, Liz Truss, announced that the Environment Agency would become a wholly open data organisation by 2018 and that key datasets would be released incrementally on that basis, starting with Open Geospatial Consortium

³ <https://www.gov.uk/government/groups/public-sector-transparency-board>

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<https://www.gov.uk/government/consultations/open-government-partnership-uk-national-action-plan-2013>

Web Feature Service and Web Map Service Environmental OpenData.⁵

The Environment Agency had reviewed its capacity, particularly in terms of working in partnership with other bodies in the response to the severe flooding in the winter of 2013-14 and concluded that in the medium to longer term, its effectiveness depended more on partner organisations being able to use its data more freely than the previous charged re-use model.

Ordnance Survey

Ordnance Survey ceased to be an Executive Agency of the Department for Business, Innovation and Skills in April 2014 and became a wholly government-owned company. This development was viewed with great interest, both within and beyond Government, with the information assets of the national mapping agency being valuable in their own right as well as forming the basis for many derived products in other organisations in the public and private sectors. Government funding for some geospatial open data releases balanced some of the concerns about the strengthening of the business-oriented footing of the wider organisation. Working closely with colleagues in Ordnance Survey, the Government Legal Department and Business, Innovation and Skills, the Information Policy team secured the Crown ownership of the public task products of the new company as a condition of its exclusive licence of the Crown copyright material it inherited from its predecessor body.

OGI v.3

The UK Government Licensing Framework (UKGLF) was launched in 2010. The centrepiece of the UKGLF is the Open Government Licence (OGI), under which most central government information that is subject to Crown copyright – and also a substantial amount of other PSI – can be used and re-used.

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<http://environment.data.gov.uk/ds/catalogue/index.jsp#/catalogue>

The OGI v.3 was launched on 31 October 2014.⁶ It was always envisaged that the UK would develop the OGI to reflect new and emerging thinking on licensing of PSI and this latest version is the result of the commitment to ensure the OGI does just that. Like its predecessors, OGI v.3 has been endorsed as an open definition conformant licence by the Open Definitions Advisory Council and confirmed as being fully interoperable with Creative Commons CC BY 4.0.

The basic terms and conditions of the OGI v.3 remain the same as previous versions: allowing the use and re-use of information in any format for both commercial and non-commercial purposes; re-users are required to publish an acknowledgment of the source of the information; personal information is excluded from the licence, and for that reason references to the Data Protection Act and the Privacy and Electronic Communications (EC Directive) Regulations have been removed; departmental logos, crests, military insignia and identity documents continue to be excluded from the licence.

There are three main changes to OGI v.3:

1. The wording of the attribution requirement has been tightened to make it mandatory for re-users to always include some form of attribution statement by replacing the word 'may' with 'must':

If the Information Provider does not provide a specific attribution statement, you *must* use the following:

Contains public sector information licensed under the Open Government Licence v3.0.

2. The wording of the clause relating to exemptions that are not accessible under the Freedom of Information Act (FOIA), rather than unpublished, has been amended in an attempt to clarify its meaning:

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<https://www.nationalarchives.gov.uk/news/970.htm>

The logo for the Open Government Licence (OGI), consisting of the letters 'OGI' in a bold, black, sans-serif font.

Information that has not been accessed by way of publication or disclosure under information access legislation (including the Freedom of Information Acts for the UK and Scotland) by or with the consent of the Information Provider.

3. The non-endorsement clause has been amended to apply to cases where the Licensor and the Information Provider are different organisations/people:

This licence does not grant you any right to use the Information in a way that suggests any official status or that the Information Provider and/or Licensor endorse you or your use of the Information.

The profile and adoption of OGL is ever-increasing and is currently used by 288 local authorities. The changes made in version 3 ensured it met the needs of Ordnance Survey for its expanded open data offering. As a tool for supporting efficient compliance with the new legal framework for PSI, it is now essential even beyond the formal mandate of the Controller of HMSO for Crown bodies.

The National Archives has worked in collaboration with the Supreme Court to develop the [Open Supreme Court Licence](#)⁷ to make Supreme Court content available via The National Archives' website. The licence builds upon OGL principles while ensuring the dignity of the Supreme Court is maintained.

⁷ <http://www.nationalarchives.gov.uk/doc/open-supreme-court-licence/version/1/open-supreme-court-licence-version-1.0.pdf>

Transposition

A transposition project was set up by The National Archives shortly after EU adoption in June 2013, aware that the EU timetable ran until July 2015.

International perspective

The UK's approach to transposition of the original 2003 Directive meant that legal transposition of the revising Directive required amending an existing framework rather than starting from scratch. The UK continued its active and constructive engagement with the PSI Officials' Group (convened bi-annually by the European Commission) and noted that some member states – particularly recent accessions – were reporting their transposition from 2003 even as we prepared for 2013.

Governance

A strengthened and expanded PSI regime required representation of a wide range of stakeholders as well as significant communications and awareness-raising (these details are dealt with later in this section under the heading 'Communication and Awareness'). Those coming to PSI for the first time required induction and access to the tools necessary for transition. New obligations meant that bodies familiar with the previous regime needed clarity on what was changing.

The National Archives convened a cross-Government Steering Board covering broad swathes of the UK Government, chaired by its Director of Information Policy and Services. Departments with responsibilities for information rights (including access legislation) and transparency were included, as were sectoral leaders and sponsors of other major policy areas where both departmental business functions and information governance were paramount. These were:

- Cabinet Office
- Department for Culture, Media and Sport
- Ministry of Justice
- HM Treasury
- Department for Business, Innovation and Skills / Shareholder Executive
- Department of Health

- Department for Communities and Local Government

Also represented was the Scottish Government's Information Management strategic lead, acknowledging the different stage of constitutional evolution of the Scottish jurisdiction, particularly in the linked area of access to information. The devolution status of both Scotland and Northern Ireland required early agreement with their respective Government and Executive that the UK Government would undertake to transpose for the entirety of the UK as an EU member state.

In addition to representing their government departments and sectors, the steering board members provided expertise and knowledge that was invaluable to the task, which is gratefully acknowledged.

Legislative form

It might be assumed that a new Directive amending an existing one required merely the equivalent amendments to be made to the previous transposing instrument, the Re-use of Public Sector Information Regulation, SI 2005 No. 1515, using the powers contained in section 2 of the European Communities Act 1972. In reality, several legislative issues had to be monitored throughout the first half of the transposition project, mostly emanating from the interfaces with other statutory regimes.

Back in 2005, the original PSI Regulations were self-contained, having an effect on the exclusive rights of database or copyright of public sector bodies, but not on the underlying law of copyright. Re-use was always consequent on prior accessibility and thus there was no complexity in the relationship with access legislation. Much had changed in the intervening years.

In 2012, the previous Government had extended the FOIA (applying to England, Wales and Northern Ireland) to provide a clearer right of access and re-use of raw transparency data of many public sector

bodies⁸. This was broadly in sympathy with the effect of the EU Directive then under negotiation, but articulated its provisions in different language and at a different level of detail and not always to the same bodies' data. Faced with the recently stated will of Parliament in the revised FOIA regime and legal obligations arising from the EU Directive, careful work was required to accommodate both.

Consolidation

The rights of access to data under the FOIA 'Right to data' were retained, with the terms of re-use, including charging, being amended to follow the new EU Directive. Bodies subject to the former, but not the latter, were left as they were (mainly public service broadcasters and certain educational and research institutions).

After the articulation of the differential redress mechanism had been drafted, the length of the draft Regulations prompted the decision to revoke SI 2005 No. 1515 and replace it with a single consolidated Statutory Instrument.

Guidance on the 2015 Regulations

Since the amending Directive added significant new elements to the regime for re-use of PSI, guidance had to be provided to enable public sector bodies and potential re-users to gain a full understanding of the new Regulations. Therefore, revision of the existing guidance already provided by The National Archives (and provision of new guidance where necessary) was built into the project plan for transposing the Directive into UK Regulations from the start. Existing guidance was reviewed, and new guidance planned to be in place for when the 2015 Regulations came into effect.

The previous guidance had taken the form of lengthy documents giving advice and guidance in the form of a text manual. It was decided that more effective assistance could be provided by modular on-line guidance. Specific

efforts were made to produce guidance that was simple to follow, engaging and interactive so that it should be easy to use and understand. The draft guidance was produced by members of the project team, and was then reviewed by the Steering Board, and by a specially convened group of PSI practitioners, known as the 'PSI Transposition Working Group'. The working group consisted of more than 100 members, all with an interest or practical involvement in the re-use of PSI. The group's members included individuals from central and local government, cultural sector bodies, information traders from the trading funds as well as other smaller arms-length agencies, representatives of the university libraries, the emergency services and the NHS, parliamentary bodies, re-users of PSI, civil society groups and IP consultants, along with colleagues from the European Commission. All were able to view and comment on the developing drafts, and they provided useful input to the texts as they progressed. The final text of the guidance was produced by an experienced on-line text editor to ensure a consistent and fluent approach to the guidance suite. The final texts were cleared by the Steering Board and with colleagues in key Whitehall departments prior to publication.

The guidance suite was published on-line on the day that the Regulations came into effect, 18 July 2015. Three new pieces of guidance were published⁹:

[Implementation guidance for re-users](#)

[Implementation guidance for public sector bodies](#)

[Implementation guidance for the cultural sector](#)

Existing guidance was either withdrawn (if it was no longer relevant or had been superseded by the new guidance suite) or was replaced with new, revised versions if minor

⁸ By the [Protection of Freedoms Act 2012](#), s.102 inserted into FOIA 2000 a new s.11A and an amended s.19

⁹

<http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/psi-directive-transposition-and-re-use-regulations/>

updating was required to bring the existing guidance up-to-date, for instance the [guidance on public task statements](#)¹⁰. Work is continuing to update other guidance documents that are not directly related to the re-use of PSI (such as those related to the Information Fair Trade Scheme) to ensure that they properly reflect the new arrangements.

Communications and Awareness

Through the course of the project to transpose the amending PSI Directive, the project team included a work stream dedicated to communications and awareness-raising. This work stream was responsible for running the consultation exercise and compiling and analysing the responses, and also for establishing effective communications with interested stakeholder groups, whether across government, in the wider public sector, or among members of the public and potential commercial and non-commercial applicants to re-use PSI. A formal communications strategy identifying target audiences and key messages was drawn up and revised at key milestones in the project.

The consultation exercise was conducted in line with the Government's published [Consultation Principles](#)¹¹ and with the Department for Business, Innovation and Skills' [Transposition Guidance: How to implement European Directives effectively](#)¹². The consultation document was published on 20 August 2014, with a closing date for comments on the proposals of 7 October 2014. An impact assessment was published alongside the consultation document. The consultation was posted on the GOV.UK consultation web pages, as well as on The National Archives' own website, and those of

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<http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/about-psi/public-task/>

¹¹

<https://www.gov.uk/government/publications/consultation-principles-guidance>

¹²

<https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law>

the Northern Ireland and Scottish Governments. The consultation document was itself sent directly to a number of bodies which were felt to have a close interest in the implementation of the Directive so that they had every opportunity to comment on the proposals. The bodies sent the consultation document directly are listed in Annex A. After the close of the consultation exercise, a report summarising responses received was published; the responses were published where the respondents gave their agreement.

An extensive programme of seminars, workshops and presentations to conferences was held from 2013-2015 in an effort to raise awareness of the amending Directive and the new Regulations across public sector bodies. 54 such events were held up to the end of 2015, as well as one-to-one meetings with key parties where necessary. Where it was appropriate, these events were run in collaboration with interested partners, such as the National Museums Directors' Council, or the Scottish Government. The events covered all three of the devolved Governments and the English regions and reached audiences in the cultural sectors (archive, library and museum staff), NHS institutions, local and transport authorities, government information managers, FOI, data protection and licensing practitioners, the emergency services, national parks authorities, research establishments, parliamentary officials, university librarians, researchers and commercial re-users. Further events have continued on a reduced scale in 2016 to maintain awareness of the Regulations. In particular, sessions explaining the arrangements for charging under the new Regulations and assisting in the definition of public task, have been popular at these events. Articles were written for inclusion in many sectoral newsletters, and a number of blog posts addressing particular events or aspects of the Regulations were also published.

The National Archives was already in regular contact with representatives of civil society and open data interest groups as a result of activities for the UK National Action Plan under the Open Government Partnership agreement.

Building on these existing contacts with regular planned engagement ensured that civil society groups were aware of developments concerning the new Regulations and had the opportunity to express their views. In particular, input from civil society colleagues helped form the way that responses to the consultation document were handled.

Social media were also used to raise awareness of the new Regulations. The National Archives issued a number of Tweets through its @UkNatArchives Twitter account. A total of 166 Tweets were issued to draw attention to events or publications and to highlight the consultation, using the #PSIUK hashtag. These generated approaching 100 conversations or re-Tweets.

Significant developments were also announced by means of the existing National Archives RSS Feed aimed at re-users and licensees of PSI. A total of 40 RSS Feed messages relating to the PSI Regulations were issued up to the end of 2015, peaking in that year when they made up more than half of all the messages issued. Regular email updates were also issued to PSI Transposition Working Group members, and membership was opened up to attendees at presentations to receive these updates. Finally, events and publications were published on a page dedicated to the project to transpose the amending Directive on The National Archives' own website. Details of forthcoming events and a standing invitation to conference hosts to request speakers from The National Archives were published there. Similar pages were set up on the Knowledge Hub collaborative workspace run by the Local Government Association where a Knowledge Hub Group was set up to encourage the sharing of ideas and best practice in responding to the Regulations among local authorities. Though membership of the group remained small it continues to direct occasional enquiries and requests on PSI subjects, especially public task, to The National Archives.

Governance and Regulatory Framework

Information Management Assessments in Government

The National Archives' Information Management Assessment (IMA) programme assesses the capability of core government departments in managing their information, including the re-use of public sector information. The IMA programme's aim is to *provide robust, independent assessments of how well UK Public Sector organisations are managing their information, highlighting key risks and promoting good practice.*

Drawing on knowledge acquired through our assessments, we published two reports in autumn 2014 and spring 2015 summarising information management practices across government. These reports were produced in response to recommendations made in Sir Alex Allan's 2014 [Records Review](#). The first provides an overview of good practice identified, while the second highlights common problems and pitfalls. They can be accessed alongside individual IMA reports on our pages in [The National Archives' website](#).¹³

During 2015, IMAs of Department of Work and Pensions, Home Office, HM Treasury and Department for Education were conducted. In addition to this, formal action plan monitoring took place of a further seven government departments. The 2016 IMA programme includes IMAs of Northern Ireland Office, Parliament, Ministry of Justice and HM Revenue and Customs.

Alex Allan recommendations

Sir Alex Allan completed a review of records management practices in government, which was published in 2014¹⁴. Sir Alex made a number of recommendations for government departments, and particularly for The National Archives. These included that all core

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<https://www.gov.uk/government/publications/records-review-by-sir-alex-allan>

¹⁴

<http://www.nationalarchives.gov.uk/information-management/manage-information/ima/ima-reports-action-plans/>

departments have an Information Management Assessment and that The National Archives should publish lessons learned and good practice reports.

Sir Alex's review of records management practice highlighted particular concerns over the way that digital information was being managed in government. Sir Alex was therefore asked to complete a second review into digital records management, published in December 2015¹⁵. The report recommends that The National Archives and Government Digital Service work with the records management policy lead to deliver improvements in digital records management.

PSI Regulatory framework

The regulatory framework for PSI to ensure compliance with obligations and also to provide assurance to re-users that standards are being met was strengthened by the transposition of the amended Re-use of Public Sector Information Directive. Under the Regulations, the Information Commissioner's Office (ICO) now has the power to make binding decisions regarding most complaints about re-use. Until the Regulations came into force, the Office of Public Sector Information (OPSI), part of The National Archives, regulated the re-use of PSI through a number of channels which continue to operate within the boundaries of the new Regulations.

Information Fair Trader Scheme (IFTS)

IFTS is an administrative scheme that sets and assesses information trading standards for public sector bodies. IFTS was originally introduced to regulate the information trading activities of government trading funds, which operate under a Delegation of Authority from the Controller of HMSO. IFTS ensures that the terms of each Delegation are met. IFTS is now open to all public sector information traders as well as bodies that work with the public sector to allow the re-use of PSI. Members include

¹⁵

<https://www.gov.uk/government/publications/government-digital-records-and-archives-review-by-sir-alex-allan>

Ordnance Survey Ltd, the Met Office, the Coal Authority and the Environment Agency.

IFTS is a principles based scheme that requires its members to maximise the re-use of the information they hold while ensuring they meet standards of fairness and transparency. Members' commitment to the principles is assessed periodically according to risk. The six principles are: maximisation, transparency, fairness, simplicity, innovation and challenge. Reports are published at: <http://www.nationalarchives.gov.uk/information-management/ifts.htm>.

Until the implementation of the new Regulations, it was also possible to bring a complaint against IFTS members which OPSI would investigate. IFTS complaints reports were also published at: <http://www.nationalarchives.gov.uk/information-management/ifts.htm>. Now that regulation of these activities falls to the ICO the complaint function under IFTS has been withdrawn. The National Archives will continue to monitor and report on standards of information trading by IFTS members and make recommendations for improvements.

IFTS Online

An [online version](#) of IFTS for smaller PSI traders is also available¹⁶. This involves answering a series of questions which are assessed by way of a desk audit. Since the last report on PSI in the UK a number of new members have joined IFTS Online (or are in the process of joining at the time of writing). They include the Metropolitan Police Service, the British Film Institute and the Department for Environment, Food and Rural Affairs, (all of which joined following applications through the Exceptions to Marginal Cost Pricing Scheme detailed below), and the Cabinet Office, formerly a full IFTS member which stepped down to IFTS Online membership following the disposal of most of the information products previously licensed by the Office of Government Commerce.

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<https://www.gov.uk/government/publications/implementing-eu-directives-into-uk-law>

Exceptions to Marginal Cost Pricing (EMCP)

The National Archives' *Exceptions to Marginal Cost Pricing Scheme* was introduced as part of the Government's response to an earlier review in 2007. It was set up to act as a gateway for those government departments that wished to charge above marginal cost for the Crown copyright material they hold; the default charging model for Crown information is marginal cost. This process remains in place despite the introduction of the new Regulations. Even where a Crown body believes it is meeting the requirements of the Regulations, it must still approach the Controller of HMSO for a Delegation of Authority before it can impose conditions or charge for the licensing of Crown copyright material.

Where departments and agencies wish to charge above marginal cost, or impose restrictive non-commercial terms, they must submit a business case to The National Archives for assessment against certain criteria to ensure the government does not limit or restrict re-use. If a business case is approved, the public sector body is granted a Delegation of Authority allowing it to trade in information, or license under non-commercial terms and conditions. These information trading activities are then monitored under the Information Fair Trader Scheme. In addition, a scheme to assess applications for exceptions to OGL terms where applicants wish to impose non-commercial terms but do not wish to charge is now being piloted. It should be noted that approval under either of the exception schemes does not provide a guarantee that the public sector body is compliant with the Regulations, it solely confirms that a business case has been made justifying exception either to marginal cost pricing or to OGL terms and that a Delegation of Authority to manage certain Crown copyright information has been granted. It remains an obligation for the public sector body to comply with the Regulations.

The recommendations made in the report into the first three years of the scheme mentioned in the 2013 Report¹⁷ have been implemented.

Delegation of Authority

The Controller of HMSO grants Delegations of Authority to government departments where there are sound policy or practical benefits in doing so. The Delegations of Authority enable a Crown body to license Crown copyright material which they hold and produce.

There are certain non-Crown bodies which have been granted a Delegation from the Controller to sub-license the Crown copyright material which they hold. It is mandatory that public sector bodies which hold Crown copyright materials must apply for an exception to marginal cost pricing should they wish to charge for the re-use of Crown copyright material. The [Delegations granted](#) are made transparent on The National Archives' website¹⁸.

Dispute Resolution

The role of statutory complaint handler passed from the OPSI to the ICO via the 2015 Re-use of PSI Regulations; this transfer also saw formal complaints become subject to binding decisions as opposed to recommendations. Where a complaint concerns a Scottish public sector body, the ICO will consult and share information with the Scottish Information Commissioner (SIC). The National Archives worked closely with the ICO and SIC to agree transitional arrangements and knowledge transfer.

Prior to the 2015 Regulations taking effect, OPSI, through a team of qualified mediators, offered a number of channels to assist re-

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<http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/ifts-and-regulation/exceptions-marginal-cost-pricing/>

¹⁸

<http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/copyright-and-re-use/delegations-authority/>

users of PSI to settle disputes with PSI holders. These ranged from policy interventions through to a statutory complaints process. At the start of the process OPSI explored with the potential complainant which channel best met their needs.

- **Policy interventions**

Where the complaint related to a simple query regarding Crown copyright, the best way forward was for The National Archives to contact the Crown body directly. Such examples were often resolved quickly and easily. Examples included clarification of copyright status, how published reports could be re-used and whether a body has the authority to license Crown material. We continue to advise on these matters and to encourage the maximum re-use of Crown copyright and other PSI.

- **Facilitated discussions**

In a situation where parties have to continue to work together, often the best way to resolve a dispute is to bring the parties together for informal, facilitated discussions. Having a third party present can lead to a positive outcome. However, such an approach is not always successful and the most recent discussion that OPSI facilitated failed to resolve the dispute, which in time escalated to a complaint investigation.

- **Mediation**

OPSI introduced its formal mediation service a number of years ago. This service has now been closed following the introduction of the 2015 Regulations, and there were no further mediations carried out between the 2013 PSI Report being published and the withdrawal of this service.

- **IFTS complaints**

Up until July 2015, OPSI investigated complaints about IFTS members once the IFTS members' internal complaints process had been exhausted. There have been three

published complaints under this heading since the last report¹⁹:

[Ordnance Survey and 77M Limited](#) (April 2014)

[Ordnance Survey and Weekend365](#) (June 2014)

[PinPoint Information Limited and The Coal Authority](#) (December 2014)

A number of recommendations were made in each case; with the 77M Limited case recommendations made concerning timing, dataset comparison and pricing. In the case of Weekend365, Ordnance Survey was not considered to be in breach of the Regulations and in the case of The Coal Authority, it was decided that the Regulations were not engaged.

- **Advisory Panel on Public Sector Information**

The Advisory Panel on Public Sector Information (APPSI) provided expert advice to ministers and the Director of OPSI, an official of The National Archives. Following recommendations made in the triennial review of February 2015 and the introduction of the Re-use of Public Sector Information Regulations 2015, APPSI ceased to function with effect from 18 October 2015.

In its review capacity, it made a number of recommendations to OPSI concerning the 77M Limited complaint. It also stood ready to carry out a review if called upon during the transitional period of the 2015 Regulations; this was helpful to all concerned.

In its advisory role, David Rhind (Chairman, 2008-2015) and Phillip Webb (Interim Chairman, April-October 2015) have examined the part that APPSI played in influencing government policy: [APPSI, PSI, Open Data](#)

[and Government Information Polices and Interim Chairman's Final Report](#)²⁰.

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<http://www.nationalarchives.gov.uk/information-management/re-using-public-sector-information/about-psi/psi-reports-publications/>

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<http://www.nationalarchives.gov.uk/documents/information-management/20150619-appsi-history-and-impact.pdf>

Looking Forward

Working with DCMS and the Government Digital Service data programme

Since May 2015, there have been significant developments in the strategy and management for government data which interface directly with the re-use of PSI. Building on work done with civil society organisations on data sharing to improve service delivery and the quality of official statistics, the *Better Use of Data* consultation was launched in February 2016²¹. Further evolution of the concept of *government as a platform* outlined in the previous parliament, the Government Digital Service has featured this and the concept of open re-usable registers of core reference data as key parts of a new data strategy. This brings the re-use agenda front of centre and officials from The National Archives continue to engage and support Government colleagues in taking this forward.

Changes to the machinery of Government also led to the consolidation of a number of functions relating to the digital economy, data protection and the single market under the Department for Culture, Media and Sport. As a part of this, ministerial responsibility for The National Archives and its Government policy lead for the Re-use of Public Sector Information were transferred to the Secretary of State for Culture, Media and Sport in December 2015.

Redress provisions

The 2013 PSI Directive set out the requirement that a means of redress be available to allow re-users to challenge decisions made by public sector bodies regarding re-use. This should include the possibility of review by an impartial review body whose decisions are binding on the public sector body concerned.

This requirement was put into effect in the 2015 PSI Regulations by the ICO being able to make a decision on investigating a complaint

against a public sector body that had first had the opportunity to consider the matter itself. There is one exception to this approach: where the complaint concerns charging above marginal cost and the exceptions concerning public sector bodies considering that they have a requirement to charge to discharge their public task, the ICO makes a recommendation rather than a decision. In such cases, the recommendation is referred back to the public sector body to reconsider before confirming its re-use decision.

In the case of ICO decisions, these are appealable to the General Regulatory Chamber of the First-tier Tribunal, information rights jurisdiction (the First-tier Tribunal) for a binding decision. In the case of ICO recommendations, the public sector body can appeal the recommendation, or, in reconsidering and then confirming its decision, the complainant can appeal against the public sector body's decision to the First-tier Tribunal for a binding decision.

In developing the draft regulations, the President of the General Regulatory Chamber was consulted on the matter and gave his consent to the PSI appeal right going to the First-tier Tribunal. The Tribunal Rules Committee was furnished with a briefing and the appropriate information so that they could consider whether any rule changes were required. A Justice Impact Test was conducted and funding arrangements were agreed between The National Archives and HM Courts and Tribunals Service.

Memorandum of understanding with ICO and transitional arrangements

Following the 2015 Regulations coming into effect, existing regulatory agreements were reviewed. Consequently, the cooperation agreement between The National Archives and the Information Commissioner was superseded by an updated [Memorandum of Understanding](#) between the Information Commissioner and the Chief Executive of The

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<https://www.gov.uk/government/consultations/better-use-of-data-in-government>

National Archives²². This single document now covers all matters on which the two bodies work together.

The National Archives and the ICO worked closely together to ensure that there was a smooth handover from OPSI discharging the complaint handling role under the 2015 Regulations to the ICO being the complaint handler.

The National Archives developed implementation guidance for the 2015 Regulations, which included a section on the complaints process and in turn the ICO developed guidance on the Regulations and published it on its website. The National Archives notified the ICO of any extant complaint activity at the time of the 2015 Regulations coming into effect and again when the transitional period set out in the Regulations elapsed. It delivered a workshop at the ICO in May 2015 on OPSI's experience of complaint handling under the Regulations and the types of complaints that arise. It has also provided policy advice to the ICO on matters of interpretation such as what constitutes a public sector body for the purposes of the Regulations.

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<http://www.nationalarchives.gov.uk/information-management/legislation/section-46/>

Annex A

Organisations that received the PSI Consultation Document:

Advisory Panel on Public Sector Information	Local Government Association
Arts Council England	Museums Association
Association of Charter Trustees and Charter Town Councils	National Association of Local Councils
Association of Chief Police Officers	NHS England
British Library	National Institute for Clinical Health Excellence
Campaign for Freedom of Information	National Museums Directors' Council
Chartered Institute of Library and Information Professionals	National Records of Scotland
Chief Fire Officers' Association	Northern Ireland Local Government Association
Clinical Practice Research Datalink	Office of the Scottish Information Commissioner
Convention of Scottish Local Authorities	Open Data Institute
Culture and Heritage Directorate, Scottish Government	Open Data User Group
CyMAL	Open Knowledge Foundation
Department of Culture, Arts and Leisure, Northern Ireland	Open Rights Group
English National Park Authorities Association	Public Health England
Health and Social Care Information Centre	Public Record Office of Northern Ireland
Inform	Public Sector Transparency Board
Information Commissioner's Office	Society of Chief Librarians
Intellect UK	Society of Local Council Clerks

Joint National Park Officer Group	Welsh Local Government Association
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Responses to the consultation were received from the following organisations, plus one member of the public:

Archives and Records Association	Met Office
Association of Independent Personal Search Agents	National Institute for Health and Care Excellence
Association of School and College Leaders	National Library of Scotland
British Library	National Museum Directors' Council
CyMAL	NHS National Services Scotland
Gateshead Council	Open Data Institute
HM Land Registry	Open Data User Group
Information Commissioner's Office	Science Museum Group
London Fire Brigade	Transport for London
Marine Management Organisation	Welsh Government

PSI Timeline

