REPORT OF AAPPSSI

Report
in relation to a complaint by 77m Limited against the Office of Public Sector Information regarding the preparation and publication of the OPSI Review Report of April 2014 relating to the dispute between 77m Limited and Ordnance Survey.

Final text approved for publication 28 September 2014
REVIEW BOARD OF APPSI REPORT

1. Task

1.1 This Report relates to a complaint made directly to the Chairman of APPSI by 77m Limited (77m) that, in reviewing its original complaint against the Ordnance Survey (OS), the Office of Public Sector Information (OPSI) did not follow “due process on three different occasions and has allowed its independent and regulatory position to be undermined by undue influence of OS”.

1.2 The Report is made pursuant to APPSI’s power to receive complaints and requests for review under The Re-use of Public Sector Information Regulations 2005 (S.I. 2005 No. 1515) (the Regulations). Any reference to a regulation in this Report is, unless otherwise stated, a reference to a regulation contained in the Regulations.

1.3 In accordance with APPSI’s ‘Procedures for Reviewing Complaints arising under the Re-Use of Public Sector Information Regulations 2005’ as published on 30th June 2005 (the APPSI Procedures) complaints are considered by a specially convened APPSI Review Board, and this is a Report of that Review Board. No other member of APPSI has been involved in its creation.

1.4 The root cause of the complaint investigated by APPSI is an earlier complaint made to OPSI by 77m. The APPSI Review Board has concluded that it has no remit to consider the substance of that earlier complaint (see Section 3 below). However we make some observations on the whole long-running saga of 77m’s attempts to secure access to Public Sector Information at what they regard as appropriate cost and within a reasonable timescale. We do this in the interests of minimising such complaints in future, see paragraph 3.4.

2. Background and Scope

2.1 77m is a Private Limited Company registered on 17th June 2010 hoping to offer added value geospatial services. While 77m originally planned to re-use geospatial data – specifically the INSPIRE Index Polygons created by and obtained from HM Land Registry (HMLR) - contractual constraints demanded that they seek a commercial arrangement directly with the Public Sector Information Holder (PSIH) – OS in this case.

2.2 HMLR’s commercial arrangement with OS is controlled by the Public Sector Mapping Agreement (PSMA) which licenses public sector members to use OS data for their core business of government but excludes commercial and competing activities. The HMLR INSPIRE Index Polygons dataset is produced and held by HMLR and has been released under the Open Government Licence (OGL). The dataset can be viewed and downloaded free of charge for non-commercial purposes on the HMLR website. If the polygons are to be re-used for commercial purposes, the re-user must contact the Public Sector Information Holder (PSIH) for licence terms and fee.

1 Quotation from 77m complaint – see Annex 1
2.3 OS is a public sector body and Britain's national mapping agency. It is accredited under the Information Fair Trading Scheme (IFTS). In addition to meeting its public task, OS exploits its assets by providing a range of commercial products and services designed to enable re-use of its data - including MasterMap, the most detailed mapping maintained by OS.

2.4 77m seeks a commercial licence from OS for the re-use of the elements of the OS dataset provided to HMLR under the PSMA and used in the creation of the INSPIRE Index Polygon data set. 77m was and remains dissatisfied with the terms offered by OS, which were originally based on a MasterMap licensing model considered by 77m to be incompatible and expensive; no licence has yet been issued. 77m first sought to secure reconsideration of the terms offered by OS through direct negotiation, but was unsuccessful. 77m then complained on 30th December 2013 to OPSI that OS was in breach of its obligations under both the Regulations and IFTS.

2.5 OPSI reported on that complaint in draft on 24th March 2014, and in final form on 4th April 2014. Between the complaint investigation and the report, OS drew up and issued new terms, which 77m did not accept: they argued these were fundamentally the same as earlier terms which they had rejected. OPSI's complaint investigation was on the original terms and its report considered complaints both under the Regulations and IFTS, and made a number of recommendations. While 77m regarded the report as being generally supportive of its complaint, it considered the final version of the report as unduly influenced by OS, alleging that OS managed to have the report altered significantly in its favour. 77m engaged with OPSI and unsuccessfully attempted to amend the final report to be in line with the original draft. Subsequent to publication of the OPSI Report and to meetings of the government bodies involved OS fundamentally revised its charging structure on 19th June 2014 so far as the INSPIRE Index Map Polygons are concerned.

2.6 On 3rd June 2014 77m submitted a formal complaint against OPSI directly to the APPSI Chairman. Additional material was supplied later so the formal date of receipt of the complaint is regarded by APPSI as 9th June 2014 (see Annex 1). APPSI communicated to the interested parties on 19th June 2014 its preliminary decision that 77m's request fell broadly within its remit, and its intention to proceed.

2.7 Paragraph 21(3) of the APPSI Procedures requires a request to be limited to 2000 words, a response of the same length from the other party, and a further response of 500 words from the original requester. All applicable submissions having been received by 15th July 2014, APPSI was in a position to proceed with its review and a Review Board (the Board) consisting of Professor David Rhind CBE (Chair of APPSI), Mr Peter Wienand (past-Deputy Chair of APPSI) and Mr Phillip Webb (APPSI member) was constituted and the parties informed of its composition.

2.8 In carrying out its review, the Review Board has requested certain additional information and documents, as it is entitled to do under paragraph 19 of the APPSI Procedures. Where relevant to this review the documents in question are referred to in this report.
2.9 For the purposes of paragraph 25 of the APPSI Procedures, the Chair has concluded that no member of the Board is subject to a conflict of interest. Moreover, no member of APPSI other than Mr Webb or Professor Rhind has been involved in the production of this report.

2.10 On 9th September 2014, the Board sent a draft of this Report to the parties, inviting them to identify any errors of fact and to notify the Board if there were any further documents that the Board should examine. By 16th September 2014, the Board had received detailed responses from the parties. The Report was amended where appropriate in the light of these replies and further research. In the interests of transparency and of avoiding any new factual errors which may inadvertently have been introduced, the Board sent the revised document to 77m and OPSI on 22nd September and received responses on 26th September. Those which the Board judged to be appropriate were incorporated.

3. Remit and Powers

3.1 APPSI’s locus to consider the 77m complaint has been questioned by OPSI. OPSI maintains that the complaint falls outside APPSI’s remit, on two grounds:

1. To the extent that a complainant may request APPSI to review any recommendation made by OPSI in relation to another public sector body (in this case, OS), OPSI points out that 77m's request to APPSI does not, for the purposes of regulation 20(1), indicate any dissatisfaction with OPSI's recommendations.

2. To the extent that complaints against OPSI can be referred directly to APPSI under regulation 18(3), these apply only to complaints where OPSI, as a public sector body, has failed to comply with any requirement of the PSI Regulations, or where OPSI has failed to deal with such a complaint within a reasonable period of time. OPSI argue that 77m has not identified or asserted any such breach by OPSI.

3.2 Having considered the relevant Regulations and APPSI procedures, the Members of the Review Board have concluded that the complaint does fall within APPSI’s remit. While 77m's request for review does not relate to the substance of OPSI's recommendations, it does relate to the process by which these were made; and also to alleged delays in their implementation. In the Review Board's view, Regulation 20(1) is not limited only to dissatisfaction with the substance of OPSI's recommendations. Were it so limited, a complainant could only ask APPSI to review OPSI's recommendations as they relate to alleged non-compliance with the Regulations by the public sector body that is the subject of the complaint – but not to review OPSI's own handling of the matter. It does not seem right to the Review Board to construe the Regulations as limiting a complainant's recourse in this way.

3.3 We note that OPSI advised 77m that “In accordance with our published procedures, if you are dissatisfied with how OPSI has handled your complaint, you may apply to the Advisory Panel on Public Sector Information (APPSI), which can review the OPSI recommendations under the statutory regime. This is a review on the handling and not a repeat of the investigation.”

---

2 Email OPSI to 77m 26 March 2014 11:01
3.4 However, this underlines that 77m's request for a review relates only to the process by which OPSI's recommendations were reached, and/or to non-implementation of OPSI's recommendations. Members of the Review Board have not been asked by 77m to consider the substance of OPSI's recommendations. Consequently, any observations of the Review Board on the substance of OPSI's recommendations do not have the status of recommendations made by APPSI pursuant to regulation 21(3), and are recorded separately in Section 7 as Observations.

3.5 This also underlines that under the Regulations APPSI and the Members of the Review Board are confined to considering complaints relating to non-compliance with them (see Regulation 17(2) relating to the origination of the process of complaint), or to a failure by OPSI or another body specified in regulation 18(4) to deal with a complaint made to it in a reasonable time. It has no power to extend its consideration to complaints of breach of IFTS, and those parts of OPSI’s report which related to such matters have not been considered as such by the Board, or made subject to its formal decision.

3.6 APPSI's role under the Regulations is to consider a complaint in accordance with its procedures, and to make a recommendation. This is precisely analogous to the role of OPSI under Regulation 19. The Regulations do not give either OPSI or APPSI any power to enforce their recommendations: as the procedures of both OPSI and APPSI make clear, such recommendations are non-binding. The reason for this is touched on in section 7.3.2 below.

3.7 The powers and duties of APPSI in this context are established by the Regulations, and neither APPSI, nor the parties, nor the Board, has any power to extend its remit, or to waive the limits so set. The interpretation of the Regulations in this respect is a matter of law for the Board to determine.

3.8 Separately from the complaints review procedures, OPSI offers a non-statutory mediation service. APPSI does not (and is not resourced to) offer a mediation service.

3.9 As noted in paragraph 14 of the APPSI Procedures, consideration of a complaint or the conducting of a review by APPSI under these procedures does not preclude recourse to the courts at any time or to any other form of dispute resolution or regulatory process. APPSI will not, however, consider any complaint or conduct a review where it is the subject of a current judicial process. The Members of the Review Board have not been made aware of any judicial process relating to the subject matter of 77m's complaint against OS.

---

4. **Complaint Investigation and Analysis**

4.1 The 77m complaint is attached as Annex 1. In considering 77m’s complaint, the Board chose for simplicity in formulating its response to adopt the same approach and categorisation employed by OPSI. Below we review each of the issues raised by 77m (see annex), the OPSI Report recommendations, OPSI’s statement of action taken and whether the recommendation was met. In each case we provide a Board Opinion and recommendations where appropriate.

4.2 **Issue 1: Publishing of OPSI's Complaint Report**

4.2.1 This complaint relates to the preparation and final publication of OPSI’s Review Report of April 2014 concerning the dispute between 77m and OS. The specific period of interest is between 24th March 2014 and the 4th April 2014 during which the following occurred:

- OPSI’s draft Review Report was issued to 77m and OS on 24th March 2014.
- The document was sent to both parties to check for factual accuracy in accordance with OPSI’s review procedures⁴.
- Each of the parties were given 5 days to respond with any factual corrections.
- 77m responded on 25th March 2014 with no challenges to factual accuracy.
- 77m were then told by OPSI of their intention to allow 24 hours for the parties to review the final report prior to publication. ⁵
- OS responded by email 1 minute before the 5 day deadline ended on 31st March 2014 with corrections for factual inaccuracy together with a requests for clarification and challenges to the scope of the document.⁶
- OPSI revised the document and issued the final copy of the report on 4th April 2014.
- 77m had only 75mins rather than the promised one day to consider the final copy before publication.
- The final report did contain significant changes, some arguably going beyond corrections for factual inaccuracy.
- 77m objected to these changes and requested that the previous draft issued on 24th March 2014 be reinstated as the published version. The request was not accepted by OPSI.
- 77m subsequently claimed that OS and OPSI had colluded to strengthen OS’s case.
- 77m then submitted a formal complaint to APPSI against OPSI’s handling of the Review Process on 9th June 2014.

4.2.2 As summarised above and in accordance with the OPSI Procedures, both parties were presented with OPSI’s draft Review Report on 24th March 2014 and given the opportunity to comment on the factual content. OPSI as the author and owner of the

---

⁴ OPSI Procedures for investigation complaints arising under the Re-Use of Public Sector Information Regulation 2005, published 2012
⁵ Email from OPSI to 77m 1st April 2014 11:54
⁶ Email from OS to OPSI on 31st March 2014 17:59
Review Report retained editorial control and could, under its published procedures, make changes of its own without any further consultation prior to final publication. OPSI's procedures do not require OPSI to give the parties to a complaint any opportunity to review the final version of its report prior to publication.

4.2.3 Comparison of the draft Review Report and the published version does reveal significant variations. Detailed analysis of the final report suggests that the bulk of the changes were indeed influenced by the amendments proposed by OS.Whilst some of these are helpful corrections and clarifications, some comments could certainly be said to have gone beyond what would normally be considered corrections for factual accuracy. While OPSI exercised discretion and judgement in selecting and applying changes to the final document, it did accept 85% (34/40) of OS’s amendments and/or suggestions. This figure is potentially misleading because some of the changes duplicate earlier changes in the document yet are counted again. Nevertheless the scale of the changes made is considerable. OPSI appeared to reject the OS amendments where they related directly to OPSI’s recommendations, or to the IFTS section of the report which falls outside the Board’s remit. The key issue is whether these changes materially altered the substance of the OPSI Report and, if so, (notwithstanding that OPSI’s procedures do not commit OPSI to do so) whether 77m should have been allowed to check the changes for factual accuracy of the changes made.

4.2.4 77m objected to OPSI acceptance of a range of proposed OS amendments not least the insertion of the term ‘substitution’ rather than, or in addition to, ‘coincidence’.

4.2.5 Thus in paragraph 43 of the draft the text said: “As the issue of level of coincidence between MasterMap and the INSPIRE Index polygon dataset remains unclear, and is the crux of this issue, OPSI recommends that the level of coincidence between the INSPIRE Index polygon dataset and MasterMap is clarified no later than 30th June 2014”.

4.2.6 Following the OS response critical of this wording, the final version became paragraph 44: “As potential for substitution between MasterMap and the INSPIRE Index Polygon dataset remains unclear, and is, in OPSI’s opinion, the crux of the issue, OPSI recommends that the level of coincidence and possibility of substitution between the INSPIRE Index polygon dataset and MasterMap is clarified no later than 30th June 2014”. OPSI Recommendation 2 abbreviates this but retains the substitution element.

4.2.7 The use of these two terms raises complex issues. ‘Coincidence’ in this context describes a situation where the lines or polygons in the two data sets at issue – the HMLR-created INSPIRE Index Polygons and OS’s MasterMap Topography Layer – either are or are not spatially coincident. The implication of this – and 77m’s view - is that if they are not coincident then royalties for use of the former should arguably be much less than for MasterMap (and possibly zero). In practice it is extremely unlikely that all of the lines and areas will be spatially coincident because (in the simplest case) the separate polygons shown in MasterMap for the front and rear gardens of houses and the house outline are
usually merged together to form one HMLR polygon. Analysis is still on-going within OS and has now additionally been commissioned from an independent source by 77m. OS claims that their analysis shows high levels of coincidence though variable geographically whilst 77m disputes this and claims their analysis contradicts that finding. (see Section 4.4).

4.2.8 The OS response to the draft Review Report says that coincidence is not the primary basis on which OS assesses royalties. It does however have some limited significance. According to the OS web site a threshold exists under which organisations can use OS and other data to create a new dataset under a User Derived Dataset Contract. This condition is expressed as follows: “...to create a dataset comprising polygons which have 5% or less coincidence with our data, such as a sales territory”. We infer that any case involving a higher level of coincidence requires a Framework Contract with OS. More generally however OS’ proposed amendment to the OPSI document makes clear that the basis of their charging is an OS assessment of market value of each proposed new product and whether it can be substituted for an existing product and thereby possibly ‘cannibalise’ the revenues of the existing product. How widely known is this approach is not clear: we were not able to find any relevant description of the substitution issue on the OS web site. 77m argues that this substitution model shifts the basis of the argument previously supported by OPSI and influences the solutions available. In essence the OS pricing model is based upon qualitative (and potentially subjective) factors rather than highly quantifiable ones.

4.2.9 OS takes the view that it is entitled to charge royalties wherever its data has been used to help create a new product, irrespective of whether other data has also been used and, to a very large extent, the different proportions involved. OS claims that both HMLR and 77m accept that the MasterMap data were used in the creation of the HMLR polygons though 77m claims that in some cases the INSPIRE polygons could not have been created using OS data.

4.2.10 OPSI’s original focus on coincidence analysis was surely driven by a logical view that such an analysis would help to quantify the OS input contribution as compared to the other IPR embedded in the INSPIRE polygons. In effect however the OS statements declared that largely irrelevant. At least four options exist on why this confusion all came about so far as we are concerned:

---

7 See the APPSI paper at http://www.nationalarchives.gov.uk/appsi/default.htm which analyses the derived data issues, including whether spatial coincidence proves one data set is derived from another.
8 An email from OS to 77m on 10th June 2014 makes this explicit in saying: “…in this particular case the key factor in arriving at a price is the risk of substitution for OS MasterMap…whilst coincidence does have a bearing on substitutability, it is not determinative of it”.
10 We note however that the 2006 Office of Fair Trading Report on ‘The commercial use of public information’ comments on HM Treasury Guidance that, where private sector competition exists, then PSIHs should operate a ‘market pricing regime’ OFT however note the difficulty of identifying market pricing where the PSIH is a monopoly or in a dominant market position.
- OPSI knew the OS view all along and conspired with OS to hide the reality until the last possible moment. We can see no rational reason or evidence for this and discount it.
- OPSI did not fully understand the basis on which OS operates its charging. This may have been the case.
- OS deliberately did not make clear its charging methodology until forced to do so. Since there is a section of the OS web site which sets out the principles and gives two worked examples of charging\(^\text{11}\) this seems untenable though the OS comments on the OPSI draft Report and OS’s email of 10\(^\text{th}\) June 2014 (see above) make clear the principles being followed by OS much more directly than does the web site. We make observations about relevant aspects of this situation in Section 7.
- There is inadequate transparency about and public understanding of the basis on which OS operates its charging regime.

**The Board’s Opinion**

4.2.11 In summary, the Board concludes that there is no doubt that the OPSI Review Report was modified significantly prior to publication as a result of comments from one of the parties, namely OS. The reason why a number of the more significant changes were appropriate was that the basis of OS charging was not articulated clearly (or, as OS argued, correctly) in the original draft. While OPSI retained editorial control to make such extensive (and arguably controversial) changes without further discussion with both parties this triggered a conviction on the part of 77m that OPSI was colluding with (or unduly influenced by) OS. The unanswered question is why various parties were not aware of the primary basis on which OS claims to base its charges at an earlier stage.

4.2.12 The Board believes that OPSI complied assiduously with its review procedures, but that this ironically may have been a mistake in the circumstances, and there are lessons to be learned from what occurred. In our view OPSI attracts criticism regarding its conformance to, and management of the review process and practice, by:

1. Allowing the final check for factual accuracy to introduce such major changes to the underlying argument supporting their recommendations without explanation.

2. Having amended the final draft to such a degree the Board believes that OPSI should have consulted with both parties (delaying publication if necessary) to attempt to achieve consensus, maintain transparency and ensure even-handedness before proceeding to final publication. We are not convinced that such consensus would have been achievable but it should have been attempted.

3. OPSI informed the other parties that it would send them a copy of the final report a day before publication. The email\textsuperscript{12} announcing this was not specific on whether this would be a courtesy or was for any final changes to be sought. The possibility of the latter was not explicitly ruled out. The ambiguity was unhelpful; 77m took the latter to be the case and responded at length. In a follow-up email\textsuperscript{13} OPSI maintained that circulation of the report before publication was a courtesy.

4.2.13 The Board acknowledges OPSI’s long history of furthering the cause of re-use of Public Sector Information. However some of the issues that are now being encountered (as evidenced in this report) are increasingly technical, even arcane and vary from one data domain to another. For this reason we urge OPSI to draw upon external experts on a contracted basis to provide the necessary detailed technical knowledge, background and other expertise not readily available from OPSI’s internal resources. The Board Recommends that OPSI establishes a contracted panel of external business and technical experts on which it can readily call for assistance when addressing these more complex commercial and technical issues. This might operate by employing a model similar to that used by the Cabinet Office for Major Project and Gateway Reviews.

4.2.14 The Board notes that OPSI’s recommendations (many of which favoured 77m) were not fundamentally altered in the final report. For this reason, the Board does not consider that it would be proportionate to recommend that OPSI should re-open its process. However, for as long as the existing procedures remain in effect (they will be replaced in due course following the changes to the underlying legislation due to come into force next year - see 7.3 below), the Board Recommends that OPSI should review its present process and practice;

1. to ensure that, wherever possible, any submissions made which result in changes to its draft reports are indeed submissions relating to factual accuracy;

2. to ensure that if submissions are made which (even if arguably) affect the underlying arguments, consider whether deadlines should be extended, and an opportunity provided, for both parties to comment on the final version of OPSI’s report, with a view to achieving consensus, or, if that is not possible, at least maintaining transparency and ensuring even-handedness before proceeding to final publication;

3. where OPSI decides to apply its procedures strictly, and offer no opportunity to the parties to comment on the final version of its report, avoid the creation of any unrealistic expectations by making explicit that the final version of the report is circulated for information only, and not for further comment.

4.3 Issue 2: Meetings

\textsuperscript{12} Email from OPSI to 77m 1 April 11:54
\textsuperscript{13} Email from OPSI to 77m 7 April 10:31
4.3.1 The second of 77m’s complaints relates to their difficulties in securing meetings with senior officials in relation to the OPSI report. This refers to:

- a specific meeting called on 13th June 2014 by the Controller of Crown copyright with other government departments and/or agencies to address Crown copyright licensing, and
- meetings with senior officials, requested by 77m on a number of occasions during its engagement with OPSI.

**Crown copyright licensing meeting**

4.3.2 The background to this is as set out below:

- The Controller of HMSO called an official internal meeting on 13th June 2014 with OPSI, OS, Shareholder Executive (ShEx) and HMLR to discuss broader principles and issues of Crown Copyright licensing and data handling.
- This meeting was called by the Controller of Crown copyright to resolve the situation where different parts of the Crown were not working consistently in regard to making available Public Sector Information.
- On the basis of the original plan to discuss consider recommendation 2 (which involved coincidence and the possibility of substitution) 77m had requested that they be invited to the meeting but OPSI considered it inappropriate for them to attend all or part of the meeting as it had then been defined to be an interdepartmental meeting held to discuss policy and principles not a specific commercial complaint or request.
- 77m were informed by OPSI that coincidence would not be discussed at the meeting on 13th June 2014.
- 77m were briefed by OPSI after the meeting by email on 17th June 2014.

**The Board’s Opinion**

4.3.3 The Board believes that OPSI’s approach to and handling of this interdepartmental meeting called by the Controller of Crown copyright was correct and reasonable. The declared purpose of the meeting – and emphasised at the outset of the meeting - was to examine current policy and practice in order to ensure consistent light-touch licensing of Crown copyright material based on shared principles. The unapproved meeting minutes are terse but report that discussion was at a general principle and policy level. That said, a proposal was shown by OS at the meeting for a new, banded and quantified cost model for INSPIRE polygons.

4.3.4 The Board also believes that 77m’s expectation to attend an internal government meeting to discuss policy was unrealistic. The meeting sought to identify and resolve

---

14 We note that an earlier plan was for the meeting to consider recommendation 2: email from OPSI to 77m 19th May 2014 13:35 but this was subsequently changed.
internal issues (and failings) where an external presence may well have acted as an inhibitor to free and open discussion and progress. The minutes record that the bulk of the issues discussed were much wider than those raised directly by the 77m complaint. The inclusion of 77m in the meeting could well have resulted in legitimate challenge by other commercial companies involved in similar activities. There is no obligation upon OPSI under the Regulations to make public such policy meetings. Doing so in the highly charged situation which prevailed left OPSI open to (unjustified) criticism on the grounds of a supposed lack of transparency.

4.3.5 As previously stated the declared purpose of the meeting which took place was to examine current policy and practice to ensure light-touch licensing of Crown copyright material based on shared principles. While coincidence was not specifically on the agenda it would have been impossible reasonably to exclude it during free and open discussion if any of the participants made direct reference to either coincidence or substitution. The minutes contain one small reference to coincidence and the OS proposed model of how the Survey could move to a banded pricing structure for the INSPIRE data. The Board was surprised to learn that OPSI had earlier specifically informed 77m that coincidence would not be discussed at the meeting. 77m also allege that they were told verbally that pricing would not be discussed. This is a muddled situation. The Board believes that the Controller of Crown copyright was well-justified in calling the meeting, but that different understandings of the meeting’s purpose could easily be held given the contents of emails exchanged between the parties.

4.3.6 The Board has no evidence to suggest that OPSI acted in bad faith when communicating with 77m in regard to and subsequently organising and hosting the 13th June meeting. Based on our reading of the relevant email exchanges the Board does not believe that the confusion over the scope of that meeting had, in fact, any prejudicial effect on 77m, and the information provided to 77m is evidence, perhaps, of naïveté, but not of any intent to mislead.

Requests for meetings with senior officials

4.3.7 The Board reviewed the email correspondence between OPSI and 77m over the period January to June 2014. The original complaint by 77m against OS was made to OPSI on 30th December 2013 and the review period stretched from then until the publication of the OPSI Review Report on 4th April 2014. During this period the Director of OPSI declined to meet with 77m due to the need to respect the complaint process and could not intervene until the complaint investigation was completed.

---

15 Email sent by OPSI to 77m 6th June 2014 14.57 “Just to repeat, coincidence is not being discussed at the meeting. We will feed back after 13th. As I said yesterday though, the matter is now with APPSI and so it is not appropriate for us to have continued email exchanges.”
4.3.8 77m communicated with the Chairman of APPSI to initiate a complaint against OPSI on 3rd June 2014. Since then the Director of OPSI has declined to meet with 77m due to the need to respect the complaint process.

4.3.9 Post publication of OPSI’s Review Report there were repeated requests (some phrased as demands) from 77m to attend the internal officials’ meeting called to resolve the issue of ownership and licensing of Crown data between HMLR and OS that was at the root of the 77m complaint about OPSI but not actually part of it. These requests were declined, but 77m refused to accept this decision.

4.3.10 During the period 5th April 2014 to 3rd June 2014 there were a significant number of email exchanges between 77m and OPSI with demands by the former for, and attendance at, meetings to speed the implementation of the OPSI Review Report ‘partially met’ recommendations. Detailed analysis of these emails reveals an increasing frustration and acrimonious dialogue from 77m, particularly during late May 2014. While regular working dialogue continued with OPSI officials during this period there were no meetings with OPSI directing staff.

**The Board’s Opinion**

4.3.11 The Board notes that there is nothing in the OPSI procedures to require OPSI, following publication of its final report, to attend meetings with either or both of the parties to a complaint. Nor is there anything to that effect in the Regulations. This is so even where one of the parties requests a meeting. OPSI is left a wide discretion in terms of the steps it takes to ensure that its recommendations are met. It follows that no breach of the OPSI procedures or the Regulations has been committed by OPSI.

4.3.12 The Board believes that as a general principle, especially in controversial or contentious cases, it can be useful to talk through and resolve issues face to face. However when engaged in statutory or legal processes it is also necessary to respect the integrity of the process and not intervene until the activity is completed. As a consequence, we believe that OPSI acted appropriately in the two periods cited above i.e. whilst reviews were in progress. The obvious question however is why few meetings with senior staff were held in the period from 5th April to 3rd June 2014.

4.3.13 The past two years have been an emotional, expensive and frustrating time for 77m in striving to develop a new business amid a multitude of real or perceived bureaucratic obstacles. We make an observation about this long and unsatisfactory gestation period in Section 7.

4.3.13 The frustration highlighted above may provide an insight to why only one (very robust) meeting was held (on 7th May) in the time window between the two reports being in progress. In that period OPSI was assailed by (and responded to) emails from 77m, OPSI staff were accused of siding with OS, of operating a restraint of trade, and lying.
We suspect that the breakdown in relationships materially affected the willingness of officials to meet again with 77m, especially when they knew OS was working on a new pricing model.

4.4 **Issue 3: Enforcing OPSI’s Recommendations**

4.4.1 The OPSI Review Report published on 4th April 2014 contained ten recommendations (numbered 1 to 11 but 6 does not exist). Recommendations 7 to 11 relate to the IFTS aspects of the OPSI Review Report which technically fall outside APPSI’s remit. They do however overlap with those numbered 1 to 5 and have therefore been included in the table of Recommendations for completeness and to highlight any interdependency. OPSI will continue to monitor OS conformance to these recommendations through IFTS.

**The Board’s Opinion**

4.4.2 The ten recommendations are listed below together with the action taken to date and the current status of conformance (provided from the OPSI progress report) plus an assessment by the Board.

1. **OPSI recommends that as a matter of good practice, the PSIH should ensure that permission for re-use is not unnecessarily delayed by the need to clear re-use decisions at Governance meetings by no later than 30th June 2014.**

   - Action to date - *OS has removed the need for the Pricing and Licensing Group to sign off decisions. OPSI will continue to monitor under IFTS.*\(^\text{16}\) OPSI consider the action to have been completed on target subject to ongoing monitoring.

   - **The Board’s Opinion** – The OPSI report highlighted the delay within the PSIH’s (OS) approval process due to the need to clear re-use decisions at periodically scheduled Governance meetings. The action taken provides some streamlining to the OS approvals process by removing the need for sign off by Pricing and Licensing Group. While the action as phrased was discharged promptly it remains to be seen if the speed and effectiveness of the overall licensing process has measurably improved. Should OPSI’s ongoing monitoring under IFTS identify further opportunities for introducing best practice or streamlining the approvals process further they should bring it to the attention of OS’s Accounting Officer.

2. **OPSI recommends that the level of coincidence and possibility of substitution between the INSPIRE Index Polygon dataset and MasterMap is clarified by no later than 30th June 2014.**

   - **Action to date** – *Further coincidence analysis was conducted [by OS] and shared with OPSI. The price of the INSPIRE polygons has been reduced to reflect*
the fact that coincidence is not 100%. OPSI consider the action to have been completed on target.

- The Board’s Opinion – The OS material provided to OPSI and to the Board consisted almost entirely of PowerPoint slides of maps without explanatory text e.g. describing the methodology employed. This severely limits the conclusions we can draw. The results have been rejected by 77m who contracted their own analysis by an independent party. He too is critical of the lack of information on methodology and goes further to argue that there is a need for a more objective analysis. The Board notes that an analysis was carried out within the prescribed period but, for the reason given above, has reservations about the extent to which the results are demonstrably realistic. We also note that the OPSI statement attributes the reduction in OS charging levels to the discovery that coincidence was not 100%. This seems not to match to the OS description of how they determine charges.

3. OPSI recommends that the PSIH works with relevant parties to determine the appropriate licence terms and that these are approved by OPSI prior to release and no later than 30th June 2014.

- Action to date – OPSI, OS, HMLR and ShEx met to resolve issues of principle around shared Crown data. The aim was a coherent government solution to address a long standing issue due to different licensing terms for the use of Crown data. Constructive discussion and a recognition of joint responsibilities has facilitated a new approach to support more flexible transactional pricing to assist re-use for all levels of the market. This has resulted in a significant reduction in price per polygon. Further work on simplifying the licence terms will be completed as part of the IFTS audit and also the review of Public Data Group (PDG) licences being undertaken by ShEx. OPSI consider the action to have been completed on target subject to identified allied activities and ongoing monitoring.

- The Board’s Opinion – We commend the Controller HMSO’s action in convening and leading the meeting and extracting a consensus and a new OS pricing model for the INSPIRE polygons - though how attractive that is to potential partners of OS in practice depends on a number of factors. We see OPSI’s action as the first step to engage public sector partners. The next step must be bilateral negotiations between PSIHS and commercial partners, aided by OPSI’s mediation service if appropriate, in line with normal principles of facilitated dispute resolution.

4. OPSI recommends that the PSIH should adopt an interim pricing regime to reflect the fact that the INSPIRE Index Polygon dataset is not synonymous with its MasterMap product and should not command a higher price no later than 30th April 2014.

- Action to date – OS produced an interim pricing regime which was communicated to 77m prior to the 30th April 2014 deadline. The pricing was changed significantly and ‘uncoupled’ from MasterMap by 19th June 2014. OPSI consider the Action to have been completed on target.
• **The Board’s Opinion** – This recommendation contains 3 conditions which must all be met if the recommendation is to be signed off as having been met in full:

1. OS should adopt a new interim pricing regime for commercial use of the INSPIRE Index Polygon dataset which must not be synonymous with the OS MasterMap one
2. that scheme should be no more expensive than the OS MasterMap one
3. all this should be done by 30th April 2014

The email\(^{17}\) sent by OS to 77m on 30th April 2014 included a document titled User Derived Dataset Contract (UDD) version 1.0 dated April 2014. This was said to be on the OS website and available to all new and existing partners. This appears to result in conditions 1 and 3 being met.

Table 1A in the UDD shows the annual royalty for polygons from the MasterMap Topography Layer. We assume that some of these at least have been used by HMLR in constructing their polygons. The charge varies by area of the polygon: for those under 20 hectares it is 1p per polygon per year. For polygons between 5km\(^2\) and 20km\(^2\) the charge is 25 pence annually. Experience and OS maps supplied as part of the coincidence analysis suggest that the vast bulk of HMLR polygons will be under 20 hectares in extent.

Paragraph 4.1 of the UDD contract says that for use of the Land Registry polygons the charge to be levied by OS is 30p per polygon (irrespective of size) per annum. Since we do not know the size distribution nationally of the OS MasterMap polygons it is not possible to make an accurate comparison (77m have tried to compare the charges per polygon but their analysis makes significant assumptions). Accepting that what follows is an approximation, the ratio of costs of HMLR Inspire polygons to MasterMap ones does appear to be of the order of 30 to 1 (as 77m has argued). In reality, the situation is more complex than that because there is a different charge (18p for the first polygon and 0.75p per subsequent polygon) if these are only to be viewed c.f. use of the data for some other purpose. Despite these and other factors we cannot see how condition 2 has been met. This may explain why an OPSI staff member said in an email to 77m that the recommendation had been “partially met”\(^{18}\).

Missing such a deadline by six weeks or so may not seem a catastrophe if the matter is resolved immediately thereafter. On the basis of a small modelling exercise, the new OS terms for HMLR polygons announced\(^{19}\) in June 2014 seem much lower for many applications than pertained under the previous charging regime but even they probably do not meet the pricing target as set in OPSI’s

---

\(^{17}\) Email from OS to 77m and OPSI dated 30th April 2014 16:20
\(^{18}\) Email from OPSI to 77m dated 20th May 2014 15:20
\(^{19}\) OS’s User Derived Dataset Contract version 1.1 dated June 2014
Recommendation 4 and highlighted in Condition 2 above. Neither pricing model was acceptable to 77m.

5. OPSI recommends that a more detailed analysis must be conducted to determine the level of coincidence and risk of substitution and determine suitable pricing structures in line with Regulation 15. This should be implemented no later than 30th September 2014.

- **Action to date** – Analysis was undertaken by OS that illustrated levels of coincidence. It was demonstrated that it would be difficult and costly to analyse the whole country. However OS has reduced its price per polygon significantly. OPSI considers that there is no further work to be done on this recommendation and that the action has been completed on target.
- **The Board’s Opinion** – As indicated earlier, OS pricing is now understood not to be based on how much OS data is embedded in a new derived data product. OS says that it is based on their assessment of market value of a new product constructed using OS (and possibly other) data and the risk of substitution of existing OS products by it. We make some observations on this in Section 7. However in any further work to assess coincidence it is important that the methodology employed and any assumptions made are clearly articulated if the results are to be convincing.

6. Recommendation 6 was left blank in the published OPSI Review Report.

**RECOMMENDATIONS 7 TO 11 RELATE TO IFTS AND ARE HENCE OUTSIDE OF APPSI’S REMIT**

7. OPSI recommends that the PSIH should address known issues promptly to reduce the time taken to reach a decision regarding re-use of its information so that re-use is of its information is maximised. The PSIH should not wait for re-use or a complaint. This should be implemented no later than 30th April 2014.

8. OPSI recommends that the PSIH should avoid delays where there are differences concerning the level of IP. This should be implemented no later than 30th June 2014.

9. The PSIH should work with HMLR to simplify the process to apply for a licence to re-use the information commercially. This should be implemented no later than 30th June 2014.

10. OPSI recommends that the PSIH simplifies the licence in order to make it easier to understand. This should be implemented no later than 30th September 2014.

11. OPSI recommends that the PSIH ensures that it is clear on its website how to obtain a licence to re-use the INSPIRE Index Polygon dataset and what licence terms are applicable, no later than 30th June 2014.
4.4.3 The Board has assessed compliance against the first five recommendations which fall within their remit. OPSI’s monitoring reports show that they believe Recommendations 1 to 5 as phrased to have been completed subject to on-going monitoring. The Board is content that Recommendations 1 and 3 were complete as phrased but require monitoring and, in the case of Recommendation 3, ongoing dialogue with public sector entities. Recommendation 4 as phrased was partially completed on target but despite the introduction of revised pricing levels remains unresolved. The evidence provided in regard to Recommendation 2 is such that it is impossible for us to judge whether it has been met. The deadline for meeting recommendation 5 is not yet due (at the time of writing) so we can make no comment on it. We comment on some of the issues raised in our observations in Section 7.

4.4.4 In their complaint 77m has forcefully argued that OPSI did not pursue the implementation of these recommendations with sufficient vigour in the period from 1st May to 1st June 2014. We note that under the Regulations OPSI discharged its statutory obligations when it published its recommendations on 4th April 2014 and has no statutory authority to enforce its recommendations. OPSI’s own procedures for investigating complaints arising under the Regulations and implementing any recommendations rely on mutual understanding and collaboration. OPSI required the OS Accounting Officer to provide an action plan for meeting the recommendations by the target dates specified. OS produced an action plan which was agreed with, and progress monitored by, OPSI. A regular dialogue has continued between OPSI and the OS Accounting Officer throughout the post report period. The OS Accounting Officer was one of the parties summoned to the HMSO Controller meeting on 13th June 2014. Issues relating to the broader principles of Crown Copyright licensing and re-use were brought to the attention of the Minister for the Cabinet Office through the Public Sector Transparency Board.

4.4.5 There are few penalties at OPSI’s disposal for non-compliance. In extreme cases the HMSO Controller can remove the delegation of Crown copyright from a PSIH. However given the circumstances, the commercial impact on OS’s other customers, the demonstrable progress by OS in implementing some of the recommendations plus the on-going discussions (including those leading to the 13th June 2014 meeting) the Board believe this would have been disproportionate.
5. Conclusions

5.1 All of the opinions expressed above are based on the evidence available to us in the form of papers, emails and draft minutes of meetings. Some of those papers were confidential so we have been careful in how we use their contents e.g. in redacting the names of individuals sending emails. We have also sought extra information directly from the parties to the dispute where appropriate and some of this has been helpful. We are grateful to the bodies concerned for their assistance. Nevertheless we note that the material they provided includes matters of strongly held opinion as well as verifiable facts.

5.2 77m identified three issues in their complaint to APPSI. Each of these had various parts. For that reason we have dealt with each separately in Section 4 rather than producing one simple answer to each issue. We have highlighted areas where we have concerns, such as that OPSI has on occasions acted unadvisedly in making some statements and committing to some deadlines which proved impossible to achieve – in part at least because of the actions of other parties. We have not however seen any signs of malevolent action. We suspect that a lack of highly technical skills specific to this data domain has contributed to some judgments. That said, we commend OPSI for forcing some changes within government to produce more coherent inter-working and we recognise that 77m has provided a public service in triggering some of the actions taken. The Office for Fair Trading report on Commercial Use of Public Information identified the tensions between contradictory government policies in the Public Sector Information arena plus a lack of clear and public guidance to them. Though much has changed since then for the better, this case shows much still needs to be done.

5.3 We have investigated a complaint by 77m against OPSI. Underlying that is the original dispute between 77m and OS about the price of the latter’s data. Resolving the on-going stand-off between OS and 77m is, under the Regulations as they currently stand, inescapably a matter for negotiation between those parties, assisted - should the parties so wish - by OPSI via its non-statutory mediation service.

6. Recommendations

6.1 In one sense this complaint is historic: many rules and processes have changed since 77m began its quest to re-use the INSPIRE Index Map polygons. Most importantly new EU Regulations and the resulting UK Regulations will soon be in place (see next section).

6.2 The Board having completed its deliberation has the following recommendations;

- **Recommendation 1** - The Board recommends that OPSI establishes a contracted panel of external business and technical experts on which it can readily call for assistance when addressing these more complex commercial and technical issues.

- **Recommendation 2** - The Board, while recognising the prospect of imminent legislative change, recommends that for as long as the existing procedures remain in effect that OPSI should review its present process and practice in order to:
1. ensure that any submissions made which result in changes to its draft reports are indeed submissions relating to factual accuracy;

2. ensure that if submissions are made which (even if arguably) affect the underlying arguments, consider whether deadlines should be extended, and an opportunity provided, for both parties to comment on the final version of OPSI's report, with a view to achieving consensus, or, if that is not possible, at least maintaining transparency and ensuring even-handedness before proceeding to final publication;

3. where OPSI decides to apply its procedures strictly, and offer no opportunity to the parties to comment on the final version of its report, avoid the creation of any unrealistic expectations by making explicit that the final version of the report is circulated for information only, and not for further comment.

7. Observations

As indicated earlier these observations do not form an integral part of our response to 77m’s complaint. We make them in the hope that they will help to avoid future cases such as these.

7.1 Observation 1 - Failure of the process

7.1.1 At the time of writing 77m and OS have not been able to agree on a price for use of the polygonal data created by HM Land Registry using OS and other data – over two years after 77m first attempted to obtain this Public Sector Information from HMLR. We are astonished and deeply disappointed that a process designed to facilitate the re-use of PSI in the UK should have proved so tortuous and frustrating for all concerned and, as yet, is unsuccessful. The combination of multiple players with different agendas, complex rule sets implementing very different regimes (e.g. Open Data made available free for re-use, INSPIRE data and charged-for government data under Trading Fund rules), the ‘legalisation’ of the interactions between the players, a lack of awareness of the ‘rules’ as they exist both within some parts of the public and private sectors and occasional intransigence facilitate delay and even business failure. As a result, we think there is much to be said for a systemic overview of what APPSI has called the National Information Framework20. This builds on but goes beyond the National Information Infrastructure21 which APPSI has promoted since 2010 and which the Cabinet Office is now taking forward. The NIF seeks to embed a holistic view of all the factors which will lead to a successful exploitation of data made available by


government: simply releasing data on a web site without considering many factors such as coherency of the legal framework will never be enough.

7.2 Observation 2 - OS data as geographical context and a data linkage mechanism

7.2.1 This complaint arose from an earlier one made by 77m against OS. OPSI has also received a number of other complaints about OS. This is in part because OS data plays an important role in providing a spatial context to show the location of objects (e.g. houses, roads, places) in relation to each other. And sometimes the only way that information collected by different agencies, using different approaches, can be linked to the same location or object is through use of OS map data. OS has a state-financed near monopoly in regard to the high quality, very detailed MasterMap. In a world where many organisations seek – and are encouraged - to exploit this data to create new products by admixing data, to enhance services or to generate other benefits, it follows that how OS operates is highly important.

7.2.2 The Board understands that if OS data sets are used in the creation of derived data (such as the HMLR INSPIRE Index Polygons) – almost however small the involvement and even if through providing guidance to positioning a user’s own data rather than copying of OS lines or parcels (Sections 4.2.8 and 4.2.9) - OS sees itself able to set charges based on their qualitative assessment (see 7.3.4) of likely revenues and possible product substitution. If the potential partner organisation is unwilling or unable to pay charges set by OS then OS refuses to license its data. In effect then OS has a power of veto. We also note the statement in the draft minutes of the 13th June meeting 2014 that the market which 77m proposed to enter is "already well-served". Such a value-laden statement could be viewed as protectionism of OS' market position. At the very least all this necessitates clear, public and readily understandable rules on how OS (and any other comparable PSIIs) operate, strong governance processes and expert regulation. Given the present complexities of OS and related rules and practices, we are not at all surprised that individuals running SMEs find the whole business of dealing with OS and its approach to be complex and confusing. We think that the rules, governance and regulation procedures need to be spelled out in a single and clear document of guidance for those contemplating use of OS data. The guidance on the present OS web site is inadequate. We believe that this confusion also exists elsewhere in government departments (as evidenced by the confusion involving HMLR and OS in regard to the initial discussions about the INSPIRE Index Polygons) and beyond. Complexity and confusion have consequences, such as resource-consuming complaints.

7.2.3 The complaint and preceding events raise important and complex issues but not all of these are of OS’ making. OS operates in a world where it is compelled under 22 OPSI has told us that OS operates under a delegation from the Controller of Crown copyright and is monitored under IFTS. They say that there has to be clear justification for licensing refusals.
Trading Fund regulations to cover all its costs and produce a return on investment. This leads to a business model focused on generating revenue, with charges sized by OS’ views on market pricing, and creating a risk of focusing on the short term. Matters are further complicated by other, sometimes conflicting, legislation (such as but not limited to the INSPIRE regulations). It is no surprise therefore that OS is subject to periodic complaints. APPSI members have long argued for greater transparency in OS decision-making but the reality is that the root cause of many complaints lies in the business model under which OS has to operate.

7.2.4 All that said, we welcome what we see as a greater recent flexibility to OS pricing in the new, polygon-based charging for INSPIRE Index Polygon data. OPSI’s response to the current 77m complaint (para 19) claims that the cost has been reduced by 90% overall. That does not necessarily reflect the experience of any individual customer: their charges reflect what is defined as a transaction, how large is the size of any group of polygons purchased and how frequently this occurs. Nevertheless this seems a significant step forward.

7.3 Observation 3: The regulatory environment

7.3.1 This case highlights a number of aspects of the existing regime which are due to change as a result of amendments to the Regulations, which are required in order to implement changes to the underlying EU legislation, the deadline for which is 30th June 2015.\(^23\)

7.3.2 One of these is the non-binding nature of OPSI’s recommendations, which reflects a decision when the original EU Directive was implemented in the UK to avoid a tribunal style process which could become cumbersome and potentially expensive, deterring complainants. As APPSI noted in its response to the European Commission’s consultation on amending the Directive.\(^24\) “Enforceability: When it considered the implementation of the Directive in UK law, APPSI was originally concerned to create a relatively "light touch" process for handling complaints against PSBs [Public Sector Bodies] that were alleged to be in breach of the obligations created under the Directive. However one of the problems experienced by private companies is the absence of real sanctions that could be applied in cases where PSBs are non-compliant.”

7.3.3 This will change when the Regulations are amended because the amendment Directive requires the UK (and all Member States) to introduce a means of redress operated by an impartial review body with the power to make binding decisions on public sector bodies.


7.3.4 Another change to the regime which may be relevant in cases such as this is the move under the amendment Directive towards marginal cost pricing as the default setting. Although exceptions remain which will be highly relevant to UK trading funds, all public sector bodies will henceforth need to justify charges which are not based on marginal costs, in light of the fact that the amendment Directive requires Member States to lay down objective, transparent and verifiable criteria for the calculation of charges in cases where charges above marginal cost are made.

7.3.5 This requirement is highly relevant to the present case, which demonstrates the difficulties that can arise from a lack of objective, transparent and verifiable criteria that can be used in calculating charges. This is especially the case where the data sought to be re-used comes from several sources within the public sector, which makes it all the more important for a uniform and consistent approach to charging. The National Archives is running a consultation on the proposed amendments to the existing UK regulations; the deadline for responding to consultation is 7th October 2014.

7.3.6 Finally, OS, like other public sector bodies operating in a given market, is (as noted above) not exempt from the provisions of competition law, which offers a separate means of redress and other potentially binding remedies. However, as noted above, whether issues of competition law arise in this case falls outside the remit of both OPSI and the Board.
From: 77m  
Date: 3 June 2014 17:43  
Subject: APPSI complaint 3rd June 2014  
To: APPSI Secretariat  
Cc: D Rhind

Dear Professor Rhind,

we formally wish to complain about OPSI’s handling of our initial complaint and subsequent processes as follows:

We contend that OPSI have not followed due process on 3 different occasions and has allowed its independent and regulatory position to be undermined by the Ordnance Survey. This is despite OSPI upholding our original complaint.

The 3 occasions in question are as follows:

- 5th March 2014 and the 4th April 2014 – during this period we advised OPSI that the “data derived contract” had been issued by the OS on the partnership web site on the 4th March 2014 and the subsequent sequence of events from the issuance of the final report. The draft report was only subject to amendment by either party if it contained factual inaccuracies. The release of this draft report was on 24th April 2014. Each party was given 5 working days to confirm the acceptance of the report and/or provide the necessary amendments. 77m limited confirmed its acceptance of the final draft report very quickly within the specified period. Not unreasonably we did not expect OS to fundamentally rewrite the document including 77m facts, nor that OPSI would publish this in its entirety without re checking with us.

We received the final report @ 3.00pm on the 4/4/2014 and previously we has been told by OPSI that we would have at least 24 hours’ notice before final publication. 45 minutes later we received another version on PDF format therefore given the length and complexity of the report it was impossible for anyone to offer any further comment prior to their publication at 5.00pm on the OPSI web site.

Over the next few days we remonstrated with the OPSI that this was a fundamentally different document to the one that we agreed and after further email exchanges we were prevailed upon not to delay matters, given OPSI had imposed a very tight deadline to come up with adopted interim terms by 30/4/2014.

The 1st version sent to us (by error) @ 3.00pm is the internal tracked version of all the changes that OS managed to get agreed by OPSI. This is prime facie evidence that a major omission has occurred. It can be seen from all the changes that the OS successfully managed to alter the original to significantly strengthen their position. This included them altering and deleting “our” own comments plus the addition of the term “substitution”. This term for example has no defined meaning in geographical terms.
but of course substitution can mean anything rather than coincidence which means it must be the same. These type of changes have allowed OS to throw doubt onto something which was originally very clear from OPSI. We ask that the original report be reinstated subject to any factual inaccuracies being amended.

- 8th April – 30th April - throughout this period we politely asked for a meeting to be convened prior to the 30th April so that interim terms could jointly be discussed and adopted by said date. Our requests were ignored and on the 30th April @ 4.20pm, the OS emailed its interim proposals which were in fact a diktat based on trying to achieve a fait accompli. They knew that these terms would be rejected by 77m because on the 21st January 2014 we rejected the 30p per polygon proposal already and after OPSI upholding our complaint why should we now accept these terms which contravened Recommendation 4 as well. This was basically an underhand tactic and again OPSI took no Action during this period to get interim terms adopted. A meditated meeting was then set up for the 7th May in Kew.

- 1st May – 1st June 2014 – in this period we constantly maintained that OPSI were not following due process by not enforcing its own recommendation and they have ignore our request and we then decided on the 28th May to officially complain in writing we again were rebuffed. The meeting with the OS on the 7th May was a highly charged affair but you can see clearly what happened by reading the minutes as we have substantially amended the sanitised version to reflect what was actually said. Unlike 77m, the OS did not present any real factual evidence to support its contentions and in spite of this occurring OPSI again would not enforce recommendation 4. Marcia Jackson even agrees in writing that the terms have only been “partially met”, a meaningless phrase because the view can surely only be binary, i.e. Recommendation 4 has been adopted or it hasn’t.

We therefore would ask that you review this complaint, with all the associated documentation as an audit trail, and would appreciate a rapid view on the adoption of fair interim terms, as this undue delay is having a major financial impact upon 77m Limited.

We feel this ought to have been resolved very quickly.

Our audit trail documents will follow shortly.

Regards

Philip Highland & Graham Allison,

co-founders of 77m Limited