

A MEMORANDUM OF UNDERSTANDING BETWEEN THE PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN (PHSO) AND THE INDEPENDENT MONITORING AUTHORITY FOR THE CITIZENS' RIGHTS AGREEMENT (IMA) DESCRIBING THE FRAMEWORK FOR OUR WORKING RELATIONSHIP

1. PURPOSE AND SCOPE

- 1.1 This Memorandum sets out the framework for the working relationship between PHSO and the IMA. It is intended to inform our staff and the public about how our organisations work together.
- 1.2 PHSO and the IMA are independent bodies that recognise each other's statutory responsibilities. However, they will collaborate and co-operate where relevant and lawful to do so in furthering our shared aim of supporting system-wide learning and improvement in relation to the protection of rights arising from Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement ("Part 2").
- 1.3 Each organisation will take steps to ensure that relevant staff are aware of what is in this Memorandum. They will keep staff updated about both any changes to it and the responsibilities it places on each organisation and the work that they do.
- 1.4 This Memorandum does not apply to PHSO investigations into complaints about (the actions of) the IMA as disclosure is governed by the Parliamentary Commissioner Act.
- 1.5 This Memorandum is not intended to be legally binding, and no legal rights or obligations arise from this Memorandum.

2. LEGISLATIVE FRAMEWORK AND CORE FUNCTIONS

IMA

- 2.1 The IMA was established by the European Union (Withdrawal Agreement) Act 2020 and is under a legal duty to monitor and promote the adequate and effective implementation and application in the UK of those citizens' rights provided for under Part 2¹. In exercising its functions, the IMA must have regard to the importance of addressing general or systemic failings in the implementation or application in the UK of Part 2.
- 2.2 The IMA has the power to receive complaints directly from citizens with rights arising from Part 2. The IMA may carry out inquiries which may result in recommendations to a public authority to promote the adequate and effective implementation or application of Part 2.
- 2.3 The IMA may also initiate or join legal proceedings for the purpose of promoting the adequate and effective implementation or application of Part 2. Any legal proceedings initiated by the IMA would be in the form of judicial review in England, Wales and Northern Ireland, and would be in the form of an application to the supervisory jurisdiction of the Court of Session in Scotland. Legal proceedings could include where a public authority has failed to implement or apply correctly Part 2.
- 2.4 Relevant public authorities in the UK and Gibraltar are under a legal duty to co-operate with the IMA. This includes providing information and documents requested by the IMA. Information received from Her Majesty's Revenue and Customs cannot be further disclosed by the IMA without the consent of the Commissioners of Her Majesty's Revenue and Customs.

PHSO

- 2.5 The Parliamentary and Health Service Ombudsman comprises two statutory offices, namely the Parliamentary Commissioner for Administration and the Health Service Commissioner for England. This office has always been held by one individual. The PHSO therefore has responsibilities under two pieces of legislation, namely the

¹ See paragraphs 22(1) and 23(1) of schedule 2 to the EU (Withdrawal Agreement) Act 2020.

Parliamentary Commissioner Act 1967 and the Health Service Commissioners Act 1993.

- 2.6 In accordance with these Acts, PHSO has the power to require individuals and organisations to produce information and provide documentation relevant to an investigation.
- 2.7 The legislation prevents PHSO from disclosing any information obtained in the course of, or the purpose of, any investigation, except in limited circumstances and following the conclusion of the investigation.

3. PRINCIPLES OF CO-OPERATION

- 3.1 This Memorandum is a statement of principle which supports our focus on promoting system-wide learning and improvement in relation to the protection of rights arising from Part 2. More detailed operational protocols and guidance may be developed in support of this principle.

4. CONSULTATION AND AREAS OF CO-OPERATION

- 4.1 PHSO and the IMA agree that where the functions and actions of one body affect the functions and actions of the other, they will consult and co-operate together to fulfil their respective functions as fully, effectively and efficiently as possible.
- 4.2 PHSO and the IMA will consult with each other on making practical arrangements for the co-ordination of investigations into the same or related incidents, following notification that these have been initiated. Neither party shall take part in the other party's investigation.

5. INFORMATION SHARING

- 5.1 It is anticipated that the number of cases that overlap between PHSO and the IMA's respective investigations will be small. The parties may formalise a separate information sharing agreement for the exchange of data between PHSO and the IMA. This information sharing agreement will be reviewed annually and will specify how both organisations will meet their obligations under the Data Protection Act 2018 and the General Data Protection Regulation.

6. LIAISON MEETINGS

- 6.1 Representatives of PHSO and the IMA will meet as appropriate to consider matters of mutual interest arising from their respective functions.

7. MONITORING AND REVIEWING THIS MEMORANDUM

- 7.1 PHSO and the IMA will ensure that the other has been provided with appropriate named contacts to liaise as required to carry out day to day business. Either party may suggest amendments to the MoU but the approval of both will be required to make a change.
- 7.2 Where either party identifies problems in operating this MoU, it will seek to resolve them quickly and informally. If this is not possible then the Chief Executive Officers of PHSO and the IMA will take responsibility for achieving a mutually acceptable resolution. Their decision will be final.
- 7.3 This MoU commences on the date of the signatures below. The MOU will be reviewed every two years or when changes to either party's legislation or directions are made. It will also be reviewed if the principles described above need to be altered and/or cease to be relevant for any other reason. Any alterations to the MoU will require both parties to agree.

8. KEY CONTACTS AND DISPUTE RESOLUTION

- 8.1 Details of key contacts will be maintained by PHSO and the IMA.
- 8.2 In the event of any dispute, representatives of the signatories agree to discuss how best to resolve the issues at an appropriate level. This discussion should take place as soon as reasonably practicable. If this does not resolve the dispute, the issue will be referred to the Chief Executive Officers of PHSO and the IMA, who shall endeavour to agree an appropriate resolution.

Signatures to the Memorandum

Signed:

Amarda Amroliwala

Name:

A. J. AMROLIWALA

Date:

5 OCTOBER 2021

Signed:

K. Chamberlain

Name:

K. CHAMBERLAIN

Date:

5. October 2021

