PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN

Information Sharing Policy
Sharing and Publishing information about NHS Complaints

Version 2.0
Document Control

<table>
<thead>
<tr>
<th>Title:</th>
<th>Policy - Information Sharing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Author(s):</td>
<td>Donal Galligan (Ombudsman’s Policy Manager)</td>
</tr>
<tr>
<td>Owner:</td>
<td>Director of Quality and Service Integrity</td>
</tr>
<tr>
<td>Reviewed by:</td>
<td>Policy Team</td>
</tr>
<tr>
<td>Quality Assured by:</td>
<td>Director of Communications</td>
</tr>
<tr>
<td>File Location:</td>
<td>1.07 / Business Policy and Guidance</td>
</tr>
<tr>
<td>Approval Body:</td>
<td>Executive Board</td>
</tr>
<tr>
<td>Approval Date:</td>
<td>07/10/14</td>
</tr>
</tbody>
</table>

Change History

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Status</th>
<th>Update by</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>11/09/12</td>
<td>Approved</td>
<td>Donal Galligan</td>
<td>Circulated by correspondence to EB in August 2012, approved at EB meeting</td>
</tr>
<tr>
<td>1.1</td>
<td>14/08/14</td>
<td>In draft</td>
<td>Katharine Stevenson</td>
<td>Review for this policy was due in April 2013; ownership transferred to IRM team in May 2014. Format changed to match standard template; purpose extended to cover general powers to share - not just those given as a result of HSCA.</td>
</tr>
<tr>
<td>1.2</td>
<td>22/08/14</td>
<td>In draft</td>
<td>Mark Lant</td>
<td>Feedback and comments from Legal team</td>
</tr>
<tr>
<td>1.3</td>
<td>26/08/14</td>
<td>In draft</td>
<td>Katharine Stevenson</td>
<td>Changes following Legal team comments</td>
</tr>
<tr>
<td>1.4</td>
<td>27/08/14</td>
<td>In draft</td>
<td>Mark Lant</td>
<td>Further feedback and comments from Legal team</td>
</tr>
<tr>
<td>1.5</td>
<td>27/08/14</td>
<td>In draft</td>
<td>Katharine Stevenson</td>
<td>Further changes following Legal team (including Head of FOI/DP) comments</td>
</tr>
<tr>
<td>2.0</td>
<td>22/01/15</td>
<td>Approved</td>
<td>Hannah Burling</td>
<td>Approved by Executive Board on 07/10/14</td>
</tr>
</tbody>
</table>
1. Purpose
The purpose of this policy is to describe how the Ombudsman uses the powers granted through the provisions of the Health Services Commissioners Act 1993 (HSCA) and the Data Protection Act 1998 (DPA) to share information held as a result of health complaints received by the Ombudsman.

2. Policy Statement
PHSO values the purpose of sharing information with the organisation/practitioner concerned, and with other organisations involved in regulating or monitoring the NHS. Organisations and practitioners will benefit from the detailed findings and recommendations in our decisions and reports to know what they did satisfactorily and what they did less well. It provides valuable learning and informs any subsequent review of practice more widely.

However, the legislation governing the Ombudsman’s work (the Health Service Commissioners Act 1993) did not empower her to share statements of reasons with those other than the complainant. A new power to amend this restriction was enacted through the Health and Social Care Act 2012 and added to the Health Service Commissioners Act, section 14 (2I):

“Where the Commissioner is required by this section send a report of statement of reasons for certain persons, the Commission may send the report or statement to such other persons as the Commissioner thinks appropriate.”

Working within the boundaries of the Data Protection Act 1998, the Ombudsman now has powers within her own legislation (HSCA 1993) to share the statement of reasons or the investigation report with any other person if she considers it appropriate to do so.

Detailed arrangements for sharing information with organisations can be found in Memoranda of Understanding and Operation Protocols.

3. Legal Requirements
PHSO will comply with all statutory and regulatory requirements relating to the sharing of information. In particular, the following pieces of legislation are key:

- Health Service Commissioners Act 1993;
- Data Protection Act 1998 (DPA); and

This list is not exhaustive.

The statutory bar on disclosure of information contained in the HSCA 1993 prevents the disclosure of information obtained during or for the purposes of an investigation except in limited circumstances. S.44 Freedom of Information Act 2000 confirms that we are not obliged to disclose that information in response to a Freedom of Information Act request and s.31 DPA 1998 exempts PHSO from the duty to release personal information where doing so would be likely to prejudice the proper discharge of PHSO’s functions.

4. Scope
This policy applies to information obtained or created as a result of a complaint brought to the Health Service Commissioner.

5. Objectives
The key objectives of this policy and supporting Memoranda of Understanding and Operational Protocols are to:

- facilitate and effectively share information to improve the complaints system and public services for everyone;
- demonstrate compliance with relevant legislation;
- maintain a culture which recognises the benefits, importance and value of effective information sharing; and
- define clear responsibilities.

6. Outcomes
The outcomes of compliance with this policy deliver the following:

- The creation of Memoranda of Understanding and Operational Protocols for sharing information;
- Guidance on anonymisation and securely transmitting information;
- measurable improvements in sharing information with our stakeholders;
- increased awareness of information sharing and its benefits with responsibilities clear and understood;
- risks associated with sharing information are identified, understood and arrangements to mitigate their impact are in place; and
- demonstrable evidence of compliance with legal and best practice requirements.

Compliance with the Information Sharing policy will also help to support PHSO’s strategic aims by ensuring that the information we handle is managed in a way which:

- makes it easier for people to use and access our service (strategic aim 1);
- enables PHSO to work with others to use what we learn from complaints to help them make public services better (strategic aim 3); and
- leads the way to make the complaints system better by sharing information about the way in which public services respond to complaints (strategic aim 4).

7. Sharing Information with the NHS and other health related organisations

Investigation Reports

When the Ombudsman investigates a complaint, she will send the investigation report to:

- The complainant (and to any MP or advocate who assisted them);
- The NHS organisation or practitioner complained about;
- Any person alleged to have taken or authorised the action complained of;
• The NHS organisation who at the time the report is made provided the service or has the function;

• The relevant commissioning body; and

• The NHS Commissioning Board (NHS England).

The previous requirement to send a copy of the report to the Secretary of State for Health has been removed through the Health and Social Care Act 2012.

The Ombudsman will not routinely send copies of investigation reports to professional regulators. However, the Ombudsman may do so if she considered a report to be of specific value to the regulator. In these instances PHSO will anonymise the Investigation Reports and cite section 14(2I) HSCA to enable the Ombudsman to disclose information with a person or organisation PHSO considers appropriate.

The Ombudsman will not, as a matter of routine, send copies of Investigation Reports to the Care Quality Commission (CQC) or Monitor. There will be times however where the Ombudsman needs to alert the CQC and/or Monitor to the recommendations she has made in an investigation report in order to ensure that those recommendations are properly followed up by the regulators in their inspection and monitoring programmes. The Ombudsman will do this in cases where she has found service failure and/or maladministration that extends beyond the individual case and she has therefore included action to prevent a recurrence of that service failure and/or maladministration in her recommendations for remedy. Personal data will be redacted in situations where such information needs to be shared.

Such recommendations are generally referred to by the Ombudsman as recommendations for systemic remedy. They usually take the form of recommending that the NHS organisation (or practitioner) concerned should do three things:

i. Within a specified timescale, prepare an action plan which:
   • Describes what the NHS organisation has done to ensure that the organisation (and where appropriate the person(s) concerned) has learnt the lessons from the failings identified by the upheld complaint, and
   • Details what the NHS organisation has done and/or plans to do, with timescales, to avoid a recurrence of these failings in future.

ii. Send a copy of the action plan to:
   • The complainant;
   • The Ombudsman;
   • The CQC;
   • Monitor (if the NHS organisation is a foundation trust); and
   • The commissioning body.

iii. Ensure that the regulator(s), the commissioning body and the complainant are updated regularly on progress against the action plan.

In such cases, the Ombudsman will provide the Care Quality Commission and, where appropriate, Monitor, with the following information when the investigation report is issued:

• The name of the NHS body concerned;
- A summary of the complaint and the Ombudsman’s findings; and
- Details of the Ombudsman’s recommendations.

On some occasions it may be appropriate to share information at a later stage, not just at the end of a case. For example, as part of a coroner’s inquest. In these instances PHSO applies section 14(2I) HSCA to enable the sharing of information.

**Decisions not to investigate**

When the Ombudsman decides not to investigate a complaint, she will send the statement of reasons (decision letter) to the complainant (and any MP or advocate who assisted them) and, in the circumstance described in 7.3, to the NHS organisation or practitioner complained about.

In general, our practice will be to share the decision letter in those cases where we have not seen any failings, or, if we have, that they have been put right. The purpose of sharing this letter is to provide valuable feedback about the Ombudsman’s view of the complaint and how the organisation/practitioner responded to it. We will not routinely share letters where we have decided not to investigate for other reasons (for example, where we consider there is a more appropriate means of seeking redress or where we considered the complaint to be out of time) unless, exceptionally, we consider this to be of value to the organisation/practitioner/person(s) concerned.

In sharing decision letters with the NHS organisation/practitioner/person(s) concerned, the Ombudsman must comply with the Data Protection Act 1998. Where applicable it may be necessary to redact personal data in the letter before sharing it with the NHS organisation/practitioner concerned.

The Ombudsman will not routinely share statements of reasons not to investigate with the professional regulators, but may do so if she considered there is value in doing so, for example to assist with better regulation or to help drive improvements in the quality of service. Exceptionally, where the Ombudsman has made enquiries of the regulator(s) in order to help with the assessment of the complainant, the Ombudsman may share the statement of reasons with the regulator(s). Any information shared with regulators will be suitably anonymised.

**Sharing information with others**

We now publish anonymised summaries of upheld or partly upheld cases on our Website. These are anonymised and laid before Parliament. Anyone can access this information.

We may share data about an individual organisation/cluster/service area more regularly with the regulator or other organisations (for example Parliamentary inquiries) where we consider this to indicate a possible emerging trend or pattern.

In accordance with the HSCA 1993 (as amended under s14(2I) HSCA 1993) the Ombudsman may at her discretion share the statement of reasons or the Investigation report with any other person if she considers it appropriate to do so.

PHSO will apply section 15(1) HSCA when sharing Investigation Reports where necessary. This allows the Ombudsman to disclose information ‘for the purposes of the investigation and any report to be made in respect of it’. Where it is necessary to share data PHSO will consider suitable redaction case by case. This may take many forms but it will include sharing information with a range of sources, including NHS bodies and practitioners, regulators and others, in order to decide whether to investigate a
complaint; in order to carry out an investigation; in order to conclude a report of an investigation; in order to review decisions and in order to ensure that recommendations in a report are complied with.

**In the interests of the health and safety of patients**

From time to time in the course of her casework, the Ombudsman may obtain information, for example about an individual clinician that leads her to conclude that the person is likely to constitute a threat to the health and safety of patients. In such circumstances, the Ombudsman will use her powers (under HSCA Section 15(1) (e) and (1B)) to disclose information to whomever she thinks is should be disclosed ‘in the interests of the health and safety of patients’. The Ombudsman may decide, for example, to disclose information to the NHS employer, and/or the commissioning body, the regulator or other monitoring organisations. She will do this whether or not she decides to accept the complaint for investigation. PHSO will apply DPA Schedule 2, paragraph 5 or Schedule 3, paragraph 3 in sharing this information about the individual. Only PHSO individuals with delegated authority may take the decision to disclose such information.

**Lay before Parliament**

Section 14(3) HSCA enables the Ombudsman to lay before both Houses of Parliament a special report in respect of any individual case where the Ombudsman has found injustice or hardship which ‘has not been and will not be remedied’. This power is rarely used, as the Ombudsman’s recommendations are usually complied with, but it could be used to bring an individual NHS organisation or practitioner to the attention of Parliament and the public. Details about the complainant are anonymised in these reports.

Section 14(4) HSCA enables the Ombudsman to lay before both Houses of Parliament ‘such other reports’ with respect to her functions as she sees fit. This power is used to inform Parliament and to put in the public domain a range of information about the Ombudsman’s work. It has been used to publish digests of selected cases (which are anonymised); and to raise awareness of issues which have come to the Ombudsman’s attention as a result of her casework.

It should be noted that, for the purposes of the law of defamation, the publication by the Ombudsman of any matter in sending or making a report of statement in pursuance of section 14 of the Act (paragraphs 1.3, 1.4, 1.5, 1.6, 1.10 and 1.11) is absolutely privileged.

**8. Roles and Responsibilities**

All PHSO staff have a responsibility to ensure information is shared appropriately. Different staff however have different roles in relation to this and these responsibilities are outlined below:

**Senior Information Risk Owner (SIRO):** They are the representative at the PHSO Board who understands the strategic business goals of the PHSO and how these may be impacted by the failure of sharing information appropriately.

**Directors and Heads of functions:** Have responsibility for ensuring that information is shared in line with this policy and associated guidance.

**Head of Information and Records Management:** Is responsible for the management of this policy and its supporting procedures (Memoranda of Understanding and Operational Protocols) and will work closely with the Heads of
Functions to ensure that there is consistency in the sharing of information and that advice and guidance on how to share appropriately is both provided and acted upon.

**Head of FOI/DP:** Responsible for ensuring that requests for access to information held by the Ombudsman’s Office are responded to and for the development and maintenance of the protocol with the Information Commissioner on this matter.

**All staff, contractors, and consultants, Internal Professional Advisers, Associate Clinical Advisors:** Responsible for sharing information they share with external parties is carried out in line with this policy, Memoranda of Understanding, operational protocols and associated guidance on anonymisation and information security.

### 9. Monitoring and Compliance

The Head of Information and Records Management is responsible for monitoring this policy to ensure it is up-to-date, relevant and continues to support strategic aims and objectives.

Compliance with this policy is regularly assessed by the Information and Records Management team and included within the internal audit programme and through annual information assurance statements to the SIRO.

Reviews will seek to:

- identify areas of good practice which can be adopted throughout PHSO; and
- highlight where non-compliance, if any, is occurring; and where appropriate recommend remedial action to ensure exemplary records management standards are achieved and maintained.

### 10. Review

This policy will be formally reviewed at three yearly intervals or when changes internally or externally require it to be reviewed.