

William Wragg MP
Chair, Public Administration and Constitutional Affairs Committee
Sent by email only - pacac@parliament.uk cc. hickse@parliament.uk

23 November 2023

Dear Chair,

I am writing following the Public Administration and Constitutional Affairs Committee's scrutiny hearing on 14 November, which I gave evidence to alongside PHSO's Chief Executive Officer, Rebecca Hilsenrath.

Membership of the Public Engagement Advisory Group (PEAG)

During the hearing, we offered to write to the Committee to provide further details regarding the membership of PEAG and how representative it is of those who use our service.

We instructed an independent research agency (Opinion Research Services) to identify potential PEAG members. ORS deliver the complainant satisfaction survey and therefore have extensive knowledge of our complainants. ORS provided us with a list of people who had expressed an interest in participating in further customer research, which we reviewed against the following framework:

- The panel would comprise former complainants whose case was completed by PHSO within the last 3 years
- About 1/3 of potential PEAG members would have brought a complaint about a Government department or agency
- About 2/3 of potential PEAG members would have brought a complaint about NHS care (or care in a private hospital paid for by the NHS). This reflects that most complaints PHSO receives are about the NHS
- About 1/3 of potential PEAG members should be from a Black, Asian, Mixed, or Other ethnic background.



Citygate
Moseley Street
Manchester
M2 3HQ

Inquiries: 0345 013 4033

Email: phso.enquiries@parliament.uk

www.parliament.uk/phso

- About 1/3 of potential PEAG members should be disabled or living with long-term conditions, or caring for someone who is
- The panel should be roughly equally divided between genders.

We met with complainants who were interested in taking part to explain what would be involved in participating in PEAG and to make sure we secured diverse representation on the group. This process resulted in all six of the initial places on PEAG being filled in March 2023 - and not eight as I stated during the oral evidence hearing.

There is currently a higher proportion of PEAG members (50%) who brought complaints to us about Government departments and agencies than set out in our framework. Of the three members who had their cases closed at Detailed Investigation, two were upheld/partly upheld and one was not upheld. This is broadly in line with the uphold rate for Detailed Investigations which was 68% in 2022-23. A further three members had their complaints closed at Primary Investigation.

Three further members of the public - people who had not used our service before - were invited to join PEAG in October 2023. We asked Voluntary and Community Sector organisations to advertise these roles through their networks. These new members represent some of the groups and communities that were identified through independent research as being less likely to complain to PHSO¹. Their participation and feedback are enabling us to better understand how we can remove barriers and develop a more user-focused service.

A member of the original cohort has recently withdrawn, leaving us with eight members, including the new additions to the group. They were keen to stress that they had found membership of PEAG interesting, and the work we are doing to become more user focused hugely important. However, membership was bringing-up a lot of difficult emotions for them around the loss of a loved one. We plan to expand the PEAG membership further in 2024.

We have commissioned qualitative research, building-on the discussions and feedback from PEAG members, to ensure that changes we are making to our service are evidence-based. We will continue to use a range of methods including surveys, qualitative interviews and focus groups to provide us with additional understanding and evidence to drive improvements to our service alongside PEAG as part of our public engagement and outreach work. We are aware that, even

¹ [Parliamentary and Health Service Ombudsman \(PHSO\): Complaints Research](#)



Citygate
 1Adeley Street
 Manchester
 M2 3HQ

Enquiries: 0345 615 4033

Email: phso.enquiries@ombudsman.org.uk

www.ombudsman.org.uk

with an expanded PEAG membership, we will need to continue to engage with members of the public and former complainants using a range of different methods and forums and are committed to doing so.

Mediation

I was invited to clarify our medium-term plans to increase the number of cases that we resolve through mediation. There are a number of factors affecting our ability to close a larger number of cases through mediation. Although 25% of standard health complaints that we investigate might be suitable for mediation, all parties involved - complainants, organisations, and clinicians - need to be willing, committed and available to take part in this process. We therefore do not have a target to close 25% of cases through mediation. Our ambition in 2022-23 was to double the number of cases we closed by mediation in comparison to the previous year. We achieved this goal. Our 2023-24 target is to maintain the number of cases that we close by mediation, but to widen the scope of mediation to include more complex cases and cases outside our health jurisdiction.

We are also committed to publishing the outcomes of complaints resolved through mediation to encourage more complainants and organisations to mediate, and to strengthen the data we collect on mediation cases to allow us to make strategic decisions early in our process on where mediation is likely to be the most appropriate tool. Training our caseworkers and some clinicians in mediation skills is also having an indirect impact in helping us to achieve better outcomes across our standard casework.

Our office is playing a leading role in shaping mediation practice within the international Ombuds community. We will be hosting an International Ombudsman Institute event on mediation in January with planned attendance from the Greek, Dutch, Belgian, Estonian, Portuguese, and Slovenian Ombuds. Topics considered will include how specialist mediation can be used to resolve complaints and how it differs from adjudication.

To ensure we maintain the right approach to mediation, we actively seek and act on feedback from all parties involved. We have ongoing engagement with other Ombuds both nationally and internationally to learn from each other's approaches to mediation and dispute resolution. We also keep up to date with external research into ongoing developments in mediation and have recently worked with staff involved in a university research project focusing on vulnerable patients, led by Dr Jaime Lindsey, Associate Professor of Law at the University of Reading and



Citygate
Manley Street
Manchester
M2 3HQ

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Dr Margaret Doyle, Visiting Research Fellow at the University of Essex School of Law. This research, funded through an Economic and Social Research Council New Investigator grant, aims to understand whether and, if so, the extent to which, mediation can and should be viewed as a form of therapeutic justice in medical treatment disputes.

Internal review process

The Committee asked Rebecca and I about the internal process that is available for complainants and organisations we investigate who wish to challenge our casework service and decisions.

Legislation does not require us to review our own decisions, which are intended to be the final stage of redress. In line with the Venice Principles, Ombudsman services are, by definition, constituted and designed to act as the final review process. However, we go above and beyond what is required by offering an opportunity for complainants to request a further review of PHSO's decision or the option of complaining about PHSO's service. In doing this, complainants can set out why they disagree with our decisions, or have a concern about the service provided, and have this considered by someone not involved in the original decision making.

Complainants can make a service complaint by contacting PHSO, either via the caseworker who handled their case or PHSO's contact centre. Their request will usually be considered by the relevant line manager in the operations directorate. They will contact the complainant to let them know the outcome and identify any learning or case handling lessons for the individual(s) involved. In 2022-23 our uphold rate for service complaints was 56% with the most common theme being communication which could have been clearer.

A decision review can be requested in the same way. Here we are considering whether the decision we reached was correct. Agreeing to carry out a review or investigate a service complaint does not automatically mean that we will uphold the challenge.

Challenges to our decisions are impartially considered by our Ombudsman Assurance Team. The team is directly accountable to the Ombudsman and sits outside our Operations Directorate to signify and safeguard its relative independence. As each case is considered independently on its own merits, there are no numerical targets or limits on how many challenges will progress to review, or whether to uphold/not uphold a certain proportion of reviews.



Citygate
Manley Street
Manchester
M12 3HT

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Where information or evidence is presented that shows our decision may be wrong, the Ombudsman Assurance Team will review the case, benchmarking against our quality standards and measures. As part of this process, we seek external input from clinical advisers and our Expert Advisory Panel. Last year around 3.5% of our casework was subject to a decision review. The uphold rate for decision reviews in 2022-23 was 19%.

Upholding a review means we found our original decision to be unsound and had to take action to address this. This action may include making an admission of failings and apology, issuing a new decision, carrying out further work, providing an explanation and/or financial compensation. We hold ourselves to the same standards as the organisations we investigate, including in the levels of financial compensation we offer for the impact of our shortcomings.

We welcome decision challenges as a valuable opportunity for learning. Even where we do not uphold the review (and find the decision itself sound), the Ombudsman Assurance Team will capture and share learning. These rich insights feed into our learning curriculum for caseworkers and offer feedback for individual case handlers. This is also triangulated with data from our quality sampling to ensure a consistent approach.

We believe this process, which was endorsed by our Independent Peer Reviews, has integrity and appropriate separation of functions. It provides genuine benefit to both our service users, in avoiding Judicial Review, and to us in terms of assurance and learning. Outsourcing this function to an external body would risk undermining the very nature of the Ombudsman as an independent final point of redress to the relevant public services. Judicial Review remains available to those wishing to litigate.

SPA investigation

I have written separately to confirm that we have shared with complainants, their MPs and DWP, Provisional Views for our investigation into the Department for Work and Pensions' communication of changes to women's State Pension age.

Rebecca explained to the Committee that we had received 22 new pieces of evidence from DWP in June. To correct the record, we received 4 pieces of evidence from DWP in June. The other 18 pieces of evidence were from a range of sources and received or sought at various times during the investigation.



Citygate
Anakly Street
Manchester
M2 3HQ

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www.ombudsman.org.uk

I have valued my relationship with the Committee during my seven years as Ombudsman, and the opportunity to regularly engage with members both through the inquiry process and ongoing meetings and visits.

Please do get in touch with my Office (faye.glover@ombudsman.org.uk) if you would appreciate further information to inform your report.

Yours sincerely,

Rob Behrens

Rob Behrens CBE
Ombudsman and Chair
Parliamentary and Health Service Ombudsman



Citygate
Manley Street
Manchester
M12 3HT

Enquiries: 0345 015 4033

Email: photo.enquiries@ombudsman.org.uk

www.ombudsman.org.uk