Parliamentary and Health Service Ombudsman

Bernard Jenkin MP
Chair, Public Administration and Constitutional Affairs Committee
House of Commons
London
SW1A 0AA

12 January 2018

Dear Bernard,

Follow up to PHSO Annual Scrutiny Session

Thank you for your letter of 20 December 2017, following up on some of the issues the Committee raised during our annual scrutiny hearing on 12 December. PHSO's response to these points is outlined below. I have also attached separately for the Committee the data from our latest staff survey, which we will be publishing on our website as usual in the next few weeks.

I am grateful to you and your Committee members for the rigorous and fair-minded engagement at the hearing, and for the thanks you extended to my colleagues for their commitment and public service during a challenging transition period.

1. ***Financial compensation paid in 2016-17***

The Committee asked about the amount of financial compensation PHSO paid out to complainants in 2016-17. I take this to be separate from the amount we asked bodies in jurisdiction to pay to complainants.

PHSO made 13 payments to complainants in 2016-17, totalling £26,333. This included a single payment made to a complainant's solicitors to reimburse legal fees they had incurred of £24,855 in relation to one of our investigations. The remaining 12 payments, therefore, totalled £1,478 and were relatively small consolatory payments to complainants ranging between £50 and £228.

Millbank Tower
Millbank
London SW1P 4QP

Enquiries: 0345 015 4033
Fax: 0300 061 4000
Email: phso.enquiries@ombudsman.org.uk
www.ombudsman.org.uk

2. *Delays in dealing with feedback from complainants*

There was a misunderstanding on our part during the evidence session regarding the delays in dealing with feedback from complainants about our decisions. For this I apologise. The context is that the average handing time for cases in 2012-3 was 386 days and this reduced to 216 days in 2016-17. Within this context, I can confirm that the figures the Committee had in front of them, as set out in the table below, were correct.

Table 1: time taken to complete reviews of decisions

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Average days	75.27	66.14	83.99	139.37	227.71
Maximum days	363	596	274	481	636
Minimum days	4	6	3	71	82

When PHSO formally review a decision, we carry out a detailed and careful assessment of our decision making. As the table above shows, the average time it takes us to deal with such reviews of our decisions has increased since 2012-13.

One reason for this is that increasing the number of investigations my predecessor conducted over this period (384 in 2012-13 compared to 4,239 in 2016-17) led to an increase in the amount of work subject to review, increasing the time taken to reach completion. In addition, increasing the number of investigations led to a significant drop in our uphold rate, which meant that we saw an increase in the number of requests for review. Finally, more recently there has been a temporary shortage of senior casework resource in our Customer Care Team following the introduction of our new operating model and the move of operations to Manchester. This has further contributed to the delays in this area.

None of this excuses the time taken to complete requests for case reviews. We know that people who have provided feedback about our decisions have had to wait too long for a final response. From January 2018, we are putting more senior casework resource into our Customer Care Team to help us reduce the amount of time people have to wait for our response. We are working on the basis that, from April 2018, our new target will be to complete 90% of new review work in 40 working days. This target was recommended by our internal auditors as a reasonable standard when compared to other comparable activities conducted by other organisations. We anticipate that it will take 9 months to begin regularly achieving this as we work through our backlogs and embed the changes emanating from our transformation programme that we updated the Committee on including, for example, the necessary, new training for our staff.

In this context, it is also important to note that we only conduct a review of a relatively small number of the total decisions we make every year (81 in 2016-17)

and uphold an even smaller number (15 in 2016-17). Whilst we understand that some complainants have justifiable concerns about the outcome of their cases in a relatively small number of instances, I should note that our caseworkers do also regularly receive positive feedback directly from complainants about their work, even where we have not upheld a complaint.

It is worth noting as well that feedback from complainants as measured against our Service Charter is also positive. In our most recent performance report, covering the period July to September 2017, 78% of all complainants agreed that we gave them the information they needed and 70% agreed that we had provided a good service. We know that there is much more to do, but it is also easy to lose sight of the fact that a significant majority of people are happy with the service they receive from us.

3. Withdrawing final investigation reports

Our legislation requires us to produce a report of each investigation we conduct to set out the content and findings of our investigation. The Committee raised the issue of how we would approach 'withdrawing' a report where we had taken the view that our original position was flawed. The issue is not straightforward and I have commissioned advice about the way forward. I will write to the Committee well before the end of February with our conclusions on this issue.

4. Our approach to whistleblowing by PHSO staff

Although not mentioned in your letter, the Committee also asked about our approach to whistleblowing by PHSO staff. I have sent alongside this letter a copy of our current whistleblowing policy, which sets out how our staff can raise concerns about serious wrong-doing in the organisation. The policy is available to all staff on our intranet.

In addition to the usual internal routes, which includes staff being able to raise any concerns directly with me or Amanda Campbell, we also highlight in our policy that the NAO, the non-Executive Chair of our Audit Committee and the Chair of PACAC can be contacted by those staff who feel that it would not be appropriate to raise their concerns through any of the routes available within the office. You should note that this policy is shortly due to be reviewed alongside all of our other HR policies, so please do let us know if you have any comments on it that we should consider as part of this process.

5. Historic cases

Finally, I wanted to take the opportunity to reiterate PHSO's position on the issue of historic cases that the Committee explored with us. As I said during the evidence session, there should not be a permanent body that routinely and independently reviews our decisions. This would not be appropriate as the purpose of the Ombudsman *is* to be the independent complaint handler of last resort for issues that have already been considered by the NHS in England and by UK government departments and other UK public organisations. To add a further tier of review beyond that would significantly degrade the position of the Ombudsman in the system. This is a position endorsed by current legislation, by Cabinet Office,

by the Gordon Report (2014) commissioned by Government, and by most ombudsmen practitioners.

This does not mean that we do not look again at cases where we think this is needed. As highlighted through the recent correspondence with PHSO the Facts that the Committee has been copied into, there are a relatively small number of cases going through our existing customer care process that have been specifically highlighted to me during my meetings with this group where we are assessing whether there is any more work that we should do. We hope to complete this work before the end of March 2018 and we have dedicated specific resource to help us achieve this.

More widely, as you noted in the session, the Committee has previously recommended that an inquiry could be set up to look at historic cases where doing so would assist in improving patient safety in the future, or where serious outstanding legitimate grievances persist. As I explained, this is not something that PHSO is equipped for or has the capacity to undertake. We would, however, support the Committee and the Department of Health as needed to explore how another body could be set up to do this work and stand ready to be involved in any discussions about how this could best be taken forward.

I hope that this information is helpful and I would like to conclude by noting how helpful Amanda and I found the session with the Committee. The questions put to us and the points that were raised provided much food for thought, particularly as we develop and finalise our new strategy, which we will of course share with the Committee once it is ready to be published in the New Year. Please do let me know if you have any further questions.

Yours sincerely With best wishes,

Rob Behrens

Rob Behrens CBE
Ombudsman and Chair
Parliamentary and Health Service Ombudsman