

Bernard Jenkin MP  
Chair, PACAC  
House of Commons  
London  
SW1A 0AA



1 February 2018

Dear Bernard,

### PHSO Reports

In my letter of 12 January, I committed to come back to you separately on the issue of 'withdrawing' reports that was raised during our evidence session on 12 December.

At the session, we set out what our understanding of the issue was at that point, but noted that we would need to write to you to confirm our future approach. Following careful consideration of the issues by our legal team and senior colleagues, I am now able to update you on what our approach will be in relation to such matters going forward.

### The historic position

For a significant period of time, the advice that has been provided to complainants by this office was that it was not possible to formally withdraw a final report of an investigation ourselves. As a result, the long-standing approach to addressing any mistakes in a report has been to consider whether the report can be amended (or a supplemental letter issued that complements the report) or whether we need to conduct a new investigation.

Amending a report was only considered possible if the errors were minor or inconsequential to the overall findings and conclusions reached (for example, if we could see that we had referred to a wrong date and this did not have any impact on what we found). It was considered that changes that were more significant would require a new investigation to be launched, which would enable us to consider all (or some) of the issues afresh.



**INVESTORS  
IN PEOPLE**



Printed on 100%  
recycled paper

1

Millbank Tower  
Millbank  
London SW1P 4QP

Enquiries: 0345 015 4033

Fax: 0300 061 4000

Email: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

[www.ombudsman.org.uk](http://www.ombudsman.org.uk)

We were conscious of the difficulties this could cause in unusual cases such as that which raised the issue in the written evidence you received for your inquiry. As a result, having taken further advice we recently considered that judicial review proceedings might offer a route. Even here, however, there were uncertainties about the outcome and the approach was clearly cumbersome.

This advice was provided in good faith based on an interpretation of our legislation in an area where there is a distinct lack of clarity in the drafting. As indicated at our evidence session, however, this is an issue where we have been considering our options as neither Amanda nor I have been satisfied with the position as it stands. We both consider the options available to this point as being too limited in their scope and have sought new legal advice to understand how we can broaden our approach.

### **Our new approach**

Having taken further advice I have concluded that, rather than requiring a submission to the High Court, it is possible for the Ombudsman to decide to 'quash' a report. In practice, this would mean writing to all recipients of the report to make clear that they should not rely on the findings it sets out. The letter would make clear the very exceptional circumstances that had led to the decision to 'quash' the report being made and request that any copies should be returned or destroyed. In the very rare instances where the report in question had been laid in Parliament, I would also expect to write to the Chair of PACAC setting out our reasoning in similar terms.

Although there is no specific power in our legislation that would compel the recipients of such correspondence to follow this action, this would at least be a clear signal that the findings should not be relied upon more widely, for example by a coroner during an inquest. I am presently amending our internal policy to take account of this new approach, which I anticipate will only be used in exceptional circumstances. Once your Committee has published this letter, I will also share it with the Cabinet Office so that we can work with them to consider whether any amendments could usefully be made to the draft Public Service Ombudsman Bill to make the position in law clearer.

### **The practical implications**

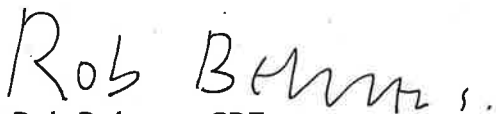
I am conscious that this issue was highlighted to the Committee via one of the submissions provided as written evidence to your annual inquiry. That case was also one of those raised in my useful meeting with PHSO the Facts last October and that I committed to looking at again.

The re-examination of this case is now complete and I can confirm that I have today also written to the complainants in that matter apologising for the handling of their case, which was clearly not to the standard that I would expect were a similar matter to come to this office now. To recognise the distress this office inadvertently caused over the years their complaint was being considered, I have decided to make an award of £1,000 to each complainant, a total of £2,000. I also remain in discussions with them to understand what, if any, more we can do to address the issues they raised.

In line with the new approach set out above, I will also be writing to all recipients of the original report telling them that, in the exceptional circumstances of this matter, I have decided to quash the report.

I hope that this is helpful and I would be happy to discuss the matter further when we next meet if that would be useful. Please do let me know if you have any further questions.

Yours sincerely



**Rob Behrens CBE**  
Ombudsman and Chair  
Parliamentary and Health Service Ombudsman

