Memorandum to the Public Administration and Constitutional Affairs Committee by the Parliamentary and Health Service Ombudsman

Scrutiny inquiry 2021-22

03 November 2022

Summary

In 2021-22 PHSO, the UK national Ombudsman service, delivered significant operational improvements, despite major challenges and a substantial increase in demand compared to the pre-pandemic period.

This was an important bridging year following the delivery of PHSO's 2018-21 Strategy and in the face of an operational environment still affected by the pandemic. We focused this year on consolidation and recovery, whilst developing the ambitious new 2022-25 Strategy to direct further operational and strategic improvements.

The COVID-19 pandemic has continued to impact on PHSO's casework. Whereas at the height of the pandemic, the public pursued fewer complaints, 2021-22 saw an increase, with complaints about the NHS and Government departments 24% above pre-pandemic levels. This is alongside ongoing reduced capacity in public services to respond to PHSO's requests for evidence and input.

Despite this challenging environment, in 2021-22 we reduced, by approximately a third, the number of cases waiting to be allocated to a caseworker, while also improving the quality of our service. This was achieved by improving processes, bringing in more caseworkers and dedicating resources to complaints where people face the most significant injustice. This trend has continued into 2022.

Key to this success has been investment in our people, both in skills and technology. In 2021-22 we recruited and onboarded an additional 82 staff to respond to complaints, as well as delivering a total 2,048 days of training.

Despite the impact of the pandemic on staff at the time our 2021 staff survey was carried out, the overall staff engagement score rose from 66% in 2020/21 to 69% in 2021-22, placing us ahead of the civil service benchmark.

PHSO's work has also achieved significant systemic impacts, from improving the quality of frontline complaints, to advising on improvements to policy and practice. Our unique perspective and commitment to embedding a learning culture in public services continues to be welcomed by organisations in our jurisdiction and recognised through our leadership role in the international Ombudsman community. In this

context and on the recommendation of PACAC, we commissioned and have recently undergone a second Ombudsman Peer Review, overseen by the revised guidance of the International Ombudsman Institute.

We have now launched an ambitious 2022-2025 Strategy which will see PHSO address barriers to justice, further strengthen the quality and speed of our service and contribute to improvements in public services.

We know from engagement with frontline staff that many public services are still facing operational challenges following the pandemic, and we anticipate that our casework load could continue to increase. We will balance an ambitious future transformation programme with responding to immediate operational pressures.

Although PHSO has delivered an effective service and made significant improvements during an extremely challenging operational period, our impact remains limited by the outdated legislation that governs our role. Reform is increasingly urgent to ensure that people complaining about the NHS in England, or UK Government services, can access justice as easily as people with complaints about services run by devolved administrations. This can be achieved, through the creation of a modernised and integrated new Public Service Ombudsman.

1. Introduction

1.1. PHSO's vision

To be an exemplary public services Ombudsman providing an independent, impartial, and fair complaints resolution service, while using our casework to help improve public services.

1.2. PHSO's role

PHSO makes final decisions on complaints that have not been resolved by UK Government departments, the NHS in England, and some other UK public organisations. We do this impartially and independently, holding public bodies to account and 'speaking truth to power'. PHSO is an independent national Ombudsman service. It is not part of Government nor the NHS in England. We are neither a consumer champion nor an advocacy service.

1.3. How we work

PHSO looks into complaints where an individual or group believes they have suffered an injustice or hardship because an organisation has not acted properly or fairly or has provided a poor service and failed to put things right.

We expect people to complain to the NHS organisation or Government agency first, so it has a chance to put things right. If an individual believes there is still a dispute about the complaint after an organisation has responded, PHSO can be asked to consider it.

When we first receive a complaint, we carry out initial checks to see if we can deal with it. We confirm whether it lies within the powers of PHSO to investigate the organisation and issue complained about. We also check whether a complaint is ready for us to investigate. For example, by law, complaints about Government departments and agencies must be referred to PHSO by an MP.

If a complaint moves past this stage, then we consider whether the complaint can be resolved quickly, for example by reaching a shared agreement between the organisation and the complainant. If not, we undertake a primary investigation to examine the evidence available, alongside specialist advice if relevant, to decide if there are unresolved matters. Alternatively, we begin formal mediation to resolve the complaint by working with the parties involved.

If a complaint cannot be decided following a primary investigation, PHSO will perform a more detailed investigation. A complaint is upheld if the organisation got something wrong, the person was negatively affected and the organisation has not already put things right. When a complaint is upheld, PHSO makes recommendations to the organisation to address what went wrong.

PHSO shares findings from casework with Parliament to help it hold to account organisations providing public services. We also share findings more widely to promote improvements in public services and work with frontline complaints teams to improve standards in complaint handling.

1.4. Data about PHSO's performance

At the end of each financial year, we carry out checks on performance data to make sure it is accurate before we publish it in PHSO's Annual Report. As a result, the data that appears in the 2022-23 Annual Report, when it is published in 2023, may differ slightly from 2022-23 data provided to the Committee before then.

2. Operational performance and improvement

The COVID-19 pandemic has continued to have a significant impact on our service.

In 2018-19, PHSO considered around 29,000 complaints. Following a dip in complaints at the height of the pandemic and a brief period where we paused consideration of health complaints in 2020-21, PHSO considered more than 36,000 complaints in 2021-22. This is an increase of 24% on pre-pandemic levels and is driven by more than 122,000 enquiries.

In April 2021, PHSO implemented a new approach, in-line with existing practice in other Ombudsman services, to focus on health-related complaints that involve more serious failings. We examine all complaints brought to us and resolve any which can be addressed speedily. We then progress further cases where the claimed injustice is significant and other cases where there is public interest in doing so. For example, we have chosen to progress some less serious complaints where the alleged failings may have wider public interest, for instance in relation to access to healthcare during pregnancy and concerns about registering at a GP practice.

Where we are not able to bring about a speedy remedy and where the claimed injustice is limited and does not have an impact on wider learning or systemic issues, we do not consider the complaint further. This means that we no longer investigate some health complaints to allow us to look at more serious complaints more quickly. Our approach to complaints about Government departments remains unaltered.

In autumn 2021, we reviewed this approach and decided to continue with it until the end of the business year 2022-23. This strategy has been successful in helping to reduce the queue of cases waiting to be allocated. We are currently undertaking a

final review to determine our long-term approach, considering over 18 months of data to ensure that we have sufficient evidence to make a robust decision.

During 2021-22 we recruited and onboarded an additional 82 staff to complaint-handling roles. Although it takes around ten months for a new caseworker to finish probationary training, this additional capacity is already helping to reduce the number of complaints waiting to be allocated.

The challenging operating environment presented by increased demand for PHSO's service is exacerbated by reduced capacity in public services to respond to PHSO requests for evidence and other information. This has had a knock-on effect on the timeliness of our service. Of the cases we were able to resolve from initial checks we maintained high standards, closing 99% within seven days. However, in tackling cases from our queue, the target of closing 95% of cases received within 12 months fell to 81%.

Despite a higher volume of cases and delayed response times from public bodies, PHSO delivered significant operational improvements in 2021-22.

The number of cases awaiting allocation reduced from 3,084 at the end of 2020-21 to 2,204 at the end of 2021-22. We are continuing this trajectory in 2022-23, with the queue of unallocated cases down to 1,647 by the end of September 2022 — a reduction of approximately 50% since March 2021.

At the same time, we also expanded our approach to mediation, resolving 29 cases using this method in 2021-22, up from 14 in 2020-21. This is a relatively new approach for PHSO and for the organisations we investigate, but we are on track to increase this figure again in 2022-23, having resolved 18 cases by mediation in Q1 of 2022-23.

We made further improvement to the way we use advice from expert clinicians to inform casework decisions. These included closer integration of clinical advisers into the casework process and the development of a Clinical Advice Quality Framework. We are now in the process of evaluating the changes made to clinical advice since 2018.

The ongoing improvements to PHSO's casework have been underpinned by a significant investment in training, including a new coaching programme to give casework managers access to specialist advice.

In 2022-23 we will invest in external relationships to improve access to our service. This will include strengthening engagement with service users, through a new user-engagement programme, including with their MPs. In 2021-22 we reviewed MP referrals and conducted research into MPs' experiences of our service. Using this evidence base, we are planning increased engagement with MPs and their staff in their constituencies and in Westminster to promote awareness of our role.

The outlook for 2022-23 continues to be challenging for public bodies, especially the NHS in England, and we are forecasting continued high demand for PHSO's service.

3. People

3.1. Learning and Development

In 2021-22 we continued to invest in the training and development of our staff.

Throughout the year, we delivered 2,048 days of training, an average of 4.17 days per person. This is an increase of 570 days on 2020-21 when staff received on average 3.29 days of training.

The Training Academy for new caseworkers has inducted seven cohorts throughout 2021-22. Ongoing training, such as for mental health emergencies, equips staff to support members of the public. We continue to run our sector-leading accreditation programme for all senior caseworkers to promote excellence in casework management.

PHSO's investment in training is recognised in improvements to staff survey results. In 2021, 93% of respondents felt that they had the skills needed to effectively do their job, with 71% agreeing that they could access the right learning and development opportunities at the right time for their role. This is a notable increase on 2020, when 89% of respondents stated that they had the skills needed to effectively do their job and 63% felt they were able to access the right learning and development opportunities at the right time.[1]

3.2. Staff engagement

PHSO has improved levels of staff engagement in 2021-22, with an overall engagement score of 69%, up from 66% in the 2020 staff survey, and 3% above the civil service benchmark.

We achieved this high level of engagement despite the ongoing impact of the pandemic on our workforce, during much of 2021-22.

One of the strongest areas in the staff survey is in organisational purpose. 82% of staff said that they believe the Ombudsman and CEO have a clear vision for the future of PHSO, 22% above the civil service benchmark. 84% said that their manager helps them to understand how they contribute to PHSO's objectives, 12% above the civil service benchmark.

There is also good evidence of effective communication, collaboration, and innovation. 93% of staff said that their manager recognises when they have done their job well, 91% said that their manger is open to their ideas, and 85% said that people in their team are encouraged to come up with better ways of doing things.

In 2021-22, PHSO trialled a hybrid working model, where staff spent two days a week in the office (pro rata). We have consulted extensively with staff and from January 2023 we will implement a new hybrid working model. This will enable greater flexibility, whilst maintaining the benefits of working together in person, with staff spending at least 40% of time averaged over a month in PHSO's offices.

As part of regular quality assurance work, PHSO identified that the research agency which had conducted its staff survey in 2020 had not applied a methodology that was fully consistent with the Civil Service People Survey when calculating some of the average section scores. This difference in methodology means that although the results remain accurate, 11 of the 2020 section average scores previously provided to PACAC have changed slightly. This amendment will ensure that they are directly comparable to civil service benchmarks.

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[1] PHSO, 2021 Staff Engagement Survey, 2021

This change to the methodology has had no impact on the overall trends in PHSO's staff survey results or the insight that can be derived from this exercise. Nor does it have any impact on the overall staff engagement score.

4. Funding

Following a one-year funding settlement, we used 2021-22 as a bridging year to focus on recovering from the impacts of the pandemic.

As well as investing in additional frontline posts, we have enhanced back-office systems to improve working efficiencies. This has included the development of the new intranet, HR system and telephony system.

For the Government's 2021 Spending Review, we submitted proposals to expand PHSO's work to enable us to better support strong and innovative public services.

We received strong support from a public consultation on an ambitious new strategy, setting out a bold vision for PHSO as a voice for improvement in public services. The 2022-25 Corporate Strategy sets out three overarching objectives:[2]

1. People who use public services have a better awareness of the role of the Ombudsman and can easily access our service
2. People we work with receive a high quality, empathetic and timely service, according to international Ombudsman principles
3. We contribute to a culture of learning and continuous improvement, leading to high standards in public service.

This strategy presents a confident and progressive future for PHSO. We have successfully recruited to fill posts in a competitive market and established a transformation programme to oversee planned changes. To ensure we also continue to deliver high standards of service, we will continually review and carefully balance the transformational goals of the new strategy with the increased demand on PHSO's service.

5. Impact and influence

5.1. Complaint Standards

Since 2018, PHSO has been working with a range of partners to support improvements in the quality of frontline complaint-handling in the NHS, Government departments and other public bodies. This work has culminated in the creation of PHSO-led Complaint Standards.

In 2021-22, we launched a pilot programme to support the NHS in England in embedding PHSO's NHS Complaint Standards. The NHS Complaint Standards are a clear and consistent framework for handling NHS Complaints in England, developed in close collaboration with the sector. In addition to the 11 official pilot sites, in 2021-22 an additional 70 health organisations voluntarily introduced the Standards. We have had positive feedback from the pilot and in 2023, we will work with the NHS in

[2] PHSO Strategy 2022-25

England to embed the standards into working practices across all parts of the NHS system.

Work was also undertaken in 2021-22 to develop PHSO-led Government Complaint Standards in partnership with Government departments and public bodies, with the UK Central Government Complaint Standards being published on 10 October 2022. These will now be piloted into 2022-23. Five Government organisations have already agreed to be early adopters of the Standards.

Core to the Complaint Standards is embedding a culture of continuous learning and improvement in public services.

5.2. Promoting learning from casework

PHSO's unique perspective on public services enables us to draw important lessons from the complaints we see to help raise standards.

In July 2021 we published a major report, *Unlocking Solutions in Imaging*[3], which highlighted recurrent failings in the way X-rays and scans are reported and followed up across the NHS. The report highlighted the need for NHS leaders, across clinical specialisms, to collaborate to implement changes in both imaging services and the wider health system.

The Royal College of Radiologists welcomed the recommendations and both NHS England and the Department for Health and Social Care have committed to implementing the changes. Feedback from NHS leaders suggests this work is on track to achieve concrete improvements in the safety and quality of care on the front line.

In July 2021, we published a report on the first stage of an investigation into the communication of changes to the state pension age for women.[4] We found that the Department for Work and Pensions (DWP) failed to take reasonable steps to publicise the changes when they discovered their communication efforts were not reaching the women affected. The next stage of our investigation considers the impact of the findings on people affected.

In a separate investigation into DWP, PHSO laid a report before Parliament in January 2022 which revealed that 118,000 people who receive welfare benefits had been affected by a Government error.[5] This resulted in Employment Support Allowance payments being mistakenly cut for people who have reduced capacity to work because of illness or disability. The error had a very significant impact on the original complainant whose benefits were incorrectly cut in half and whose health and psychological wellbeing were deeply affected as a result. DWP has provided financial redress to her. However, we remain seriously concerned that proactive action has not been taken to ensure that others impacted receive fair compensation. This is a missed

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[3] PHSO, Unlocking Solutions in Imaging, 2021

[4] PHSO, Women's State Pension Age: Our findings on the Department for Work and Pensions' communication of changes, 2021

[5] PHSO, An investigation into the Department for Work and Pensions' handling of Ms U's migration to Employment and Support Allowance, 2022

opportunity for DWP to ensure that mistakes of this nature are not repeated. Our concerns have been echoed by the National Audit Office [6].

5.3. International standards

PHSO is increasingly seen as an international leader in the Ombudsman sector, as we continue to learn from and inform global best practice.

In May 2021, we published *The Art of the Ombudsman*[7], which shared the results of research carried out across the international Ombudsman community to identify the leadership challenges faced as a result of the COVID-19 pandemic. This report led to a landmark event in November 2021, when, in partnership with the International Ombudsman Institute, we jointly hosted a working seminar on the development of national Ombudsman institutions.[8], designed to support Ombudsman schemes to meet significant modern challenges.

On behalf of the International Ombudsman Institute, PHSO has led on establishing a framework peer review process, designed to improve standards in Ombudsman services and facilitate accelerated peer learning.

As previously mentioned, PHSO was recently scrutinised through this peer review process, making PHSO the first body to undergo a review by an accredited panel. The panel was made up of the Greek Ombudsman and European President of the International Ombudsman Institute, the Israeli Ombudsman and National Auditor, the Chief Operating Officer of the UK Housing Ombudsman (also an auditor) and a senior Professor in Public Law from Manchester University with expertise in Ombudsman organisations. Following PACAC's previous recommendation to PHSO in 2021, the Panel includes robust audit expertise as well as Ombudsman experience. The Panel's independent report is being made available to PACAC.

Finally, in March 2021, PHSO launched a peer learning exchange with the Office of the Health Ombud in South Africa. This partnership, initiated in collaboration with the Foreign, Commonwealth and Development Office as part of its Global Better Health Programme, has included learning exchanges on subjects including mediation, caseworker accreditation and clinical advice. We have also hosted learning exchanges with other Ombuds from the Netherlands, Kenya, Cameroon and Bermuda.

5.4. Improving PHSO's impact

Notwithstanding the achievements outlined in this submission, the accessibility, efficiency, and effectiveness of Ombudsman services in England is hampered by outdated legislation which has not been modernised for over 50 years.

For over a decade there has been broad political support for Ombudsman reform. During that period, devolved governments in Wales, Scotland and Northern Ireland have taken legislative action to consolidate and strengthen public service Ombudsman schemes. The system for the NHS in England and for complaints about UK Government services throughout the UK, remains fragmented and outdated, with significant barriers for individuals seeking justice.

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[6] National Audit Office, Investigation into Errors in Employment Support Allowance, 2018

[7] PHSO, The Art of the Ombudsman, 2021

[8] International Ombudsman Institute, Manchester to Athens, 2022

The needs of the public would be best met through the creation of a single Public Service Ombudsman. This is in-line with international best practice.

Consolidating Ombudsman schemes into a single Public Service Ombudsman — as is already the case in Scotland, Wales and Northern Ireland — would simplify the system, make the Ombudsman more visible, and give a more complete picture of complaints across public services in England and the UK. It would not only improve access to justice for individuals but also propel wider improvements in public services.

Government must remove outdated barriers to the Ombudsman service. These include removal of the MP filter, which currently requires members of the public to bring complaints about Government departments and arms-length bodies via their MP.

Powers for the Ombudsman to investigate issues where we are yet to receive a complaint would strengthen the accountability of public services and bring PHSO in line with international standards of good practice. For example, the Public Service Ombudsman for Wales has powers to launch investigations without a complaint, where certain conditions are met. Such powers are essential for the Ombudsman to bring justice for people who are unable or unwilling to complain because of their circumstances, such as people living in long-term inpatient learning disability or mental health care, who fear they may be treated differently if they complain.

Complaint Standards Authority powers would allow the Ombudsman to provide more direct and assertive support where public services are failing to respond to complaints effectively or learn from their mistakes. These powers would not only ensure there are consistent standards for NHS and Government staff on how to respond to complaints effectively; they would also support improvements in the quality and safety of services.

It is imperative that these essential constitutional reforms are taken forward at the earliest opportunity to improve access to justice for individuals and maximise the opportunities for public services to learn from complaints.

Appendices:

A. Performance against the Service Charter
B. Staff survey results 2021
C. Positive Complainant feedback.

Appendix A: Performance against the Service Charter

The Service Charter sets out commitments to the quality of the service people can expect at each stage of the process when they bring a complaint to us. We use these commitments to measure how well we are delivering our service, and to understand where improvements are needed.

Feedback is collected throughout the year from users of our service by an independent company.

We are planning to obtain further qualitative feedback to understand the root cause behind changes in responses, as well as reviewing the questions we ask complainants to make sure we are asking the questions that those using our service feel best address their views about service quality.

Table: Service charter section scores 2021-22

Service Charter		Performance			
		2018-19	2019-20	2020-21	2021-22
Giving you the information you need	We will explain our role and what we can and cannot do (%)	79%	79%	77%	76%
	We will explain how we handle complaints and what information we need from you (%)	80%	79%	78%	73%
	We will direct you to someone who can help with your complaint if we are unable to, where possible (%)	78%	72%	76%	76%
	We will keep you regularly updated on our progress with your complaint (%)	81%	79%	80%	73%
	Overall section score against a KPI of 84% (%)	**79%**	**77%**	**78%**	**75%**
Following an open and fair process	We will listen to you to make sure we understand your complaint (%)	73%	72%	71%	65%
	We will explain the specific concerns we will be looking into (%)	88%	87%	81%	77%
	We will explain how we will do our work (%)	77%	77%	77%	75%
	We will gather all the information we need, including from you and the organisation you have complained about, before we make our decision (%)	48%	51%	51%	48%
	We will share facts with you and discuss with you what we are seeing (%)	68%	70%	69%	64%
	We will explain our decision and recommendations, and how we reached them (%)	53%	47%	49%	47%
	Overall section score against a KPI of 70% (%)	**68%**	**67%**	**66%**	**63%**

Service Charter		Performance			
		2018-19	2019-20	2020-21	2021-22
Giving you a good service	We will treat you with courtesy and respect (%)	90%	89%	87%	86%
	We will give you a final decision on your complaint as soon as we can (%)	53%	50%	46%	46%
	We will make sure our service is easily accessible to you and give you support and help if you need it (%)	67%	65%	62%	59%
	Overall section score against a KPI of 70% (%)	**70%**	**68%**	**65%**	**64%**

Appendix B: Staff Survey Results 2021-22

Headline scores

Engagement index	My work	Organisational objectives	My manager	My team
69%	80%	87%	83%	87%
Comparison	Comparison	Comparison	Comparison	Comparison
CSPS 2021: +3	CSPS 2021: +1	CSPS 2021: +2	CSPS 2021: +8	CSPS 2021: +3
Staff Survey 2020: +3	Staff Survey 2020: +4	Staff Survey 2020: +1	Staff Survey 2020: +6	Staff Survey 2020: +7

Learning and development*	Inclusion and fair treatment	Resources and workload	Pay and benefits	Leadership and managing change**
57%	82%	77%	53%	61%
Comparison	Comparison	Comparison	Comparison	Comparison
CSPS 2021: +1	CSPS 2021: +/-0	CSPS 2021: +2	CSPS 2021: +14	CSPS 2021: +3
Staff Survey 2020: +3	Staff Survey 2020: +5	Staff Survey 2020: +8	Staff Survey 2020: -15	Staff Survey 2020: +3

Further details about how the engagement index score and other headline scores are calculated is outlined in the final page of this report.

CSPS = Civil Service People Survey

*This theme includes a question that was amended in 2020. Therefore, direct comparisons with the CSPS should be treated with caution.

**Leadership and managing change takes into account more questions than the CSPS. Therefore, direct comparisons with the CSPS should be treated with caution.

Appendix C: Positive Complainant Feedback

PHSO regularly shares with its staff anonymised positive feedback from complainants, to highlight the importance of excellence standards. Below is a selection of comments shared with staff during 2021/22.

April 2021:

"I am very happy that I have had a letter from the chief executive of the Trust providing me with an apology and an acknowledgment of failings…I do not believe this would have ever happened without the help of the Ombudsman and I really appreciate all the work you have done to finally resolve this matter for me…having this apology and acknowledgment has made a huge positive impact on my mental health and will help me to move forwards now…I am delighted you were such a wonderful advocate for me when I felt very alone and vulnerable"

June 2021:

"It is a very comprehensive report that I feel accurately captures the full extent of our complaint. This is no mean feat, as our complaint is a complex and sensitive one, and you have demonstrated very clearly that you fully understand the issues, and trauma x and we have experienced. You have also ensured every aspect has been investigated and reported upon fully. Through this report you have already helped to heal some of the wounds that x and we experienced. Wounds that were a direct result of not only the failings in x's care but also by the dismissive and uncaring way in which the Trust dealt with our grievances. We now truly believe that all our efforts and the efforts of you and your advisers will ultimately deliver justice for x."

October 2021 (*on mediation*):

"I felt it was a much better process. It made the role of the Ombudsman human, a body that could not change what happened but how without making us feel inadequate it was how we can learn and improve."

February 2022:

"Following these findings, it has enabled the Trust to implement the changes that we had wanted to see. The Trust have now embedded within its service to ensure that they provide improved pathways for diagnosis and timely treatment plans for all future patients referred to their service. We had choices in which direction to take this complaint and we are now 100% certain that we made the right decision. We are certain that the service you have given is second to none and fully justified our choice. The depth of your investigation shows how important it is to have your service available to investigate complaints of the NHS and to be able to use your findings to improve further our wonderful NHS."

March 2022:

"Thank you for being just about the only person in this whole process who actually listened, who took the time to understand, and who treated me like a human being instead of a problem. Although the PHSO couldn't help in the end I really do

appreciate your sympathy and your courtesy; it's a small plaster on a big wound but it was nice to be treated like a person for once, even briefly”

“I would like to thank everyone involved for their care and compassion, and their obvious desire to look at as much as is possible. For the first time I feel we are in ‘safe hands’ and are not at the mercy of individuals more interested in protecting their own interests than ours and the public interest. I feel confident in x, and I feel he should be congratulated by his colleagues for the significant patience he has had supporting me with sensitivity and understanding to get to this point.”