

Mr William Wragg MP  
Chair, Public Administration and Constitutional Affairs  
Committee



*By Email only*

5 June 2020

Dear Mr Wragg,

Thank you for your letter of 18 May 2020, setting out PACAC's requests for additional information to support its scrutiny of PHSO. I have set out responses to each of these queries below.

**2018-19 annual report and written evidence**

- 1. Page 34 of your annual report described the number of days it has taken to close cases. Are these calendar days or working days? And could this be clarified in subsequent publications?**

The number of days taken to close cases are measured in calendar days. This is the measure we use for the majority of our KPIs as it is easily understood by members of the public and better reflects the actual experience of our complainants. (The exception being our KPI to complete 90% of case reviews within 40 working days).

We will specify in our 2019-20 annual report that we are referring to calendar days. We plan to consider the feasibility of measuring durations in working days as part of an internal review of our KPIs later in the year.

- 2. As explained on p.44, you "invested £353,000 in new ICT capabilities and technical infrastructure". Were there any teething issues with this new ICT provision? And were there any write-offs under this investment?**

Delivering the replacement of our ICT infrastructure and the first phase of replacing our Case Management System during 2019 were major undertakings. Both projects were delivered on time and within budget, and in the context of continuous consultation with case handlers. As with any project of this nature, the ICT team and a team of change champions were on hand to provide support to staff following implementation to work through any post go-live issues. These were addressed quickly and effectively.

- 3. Page 64 of your annual report noted that the Board commissioned an external independent review. What were the main learning points from this review?**

In line with standard good practice, the 2018-19 external (i.e. independent) Board effectiveness review consisted of in-depth individual interviews with each of the board members - the Ombudsman, Executive Directors and Non-Executive Directors - using a semi-structured questionnaire.



It focussed on the following four review objectives:

- assessing the Board’s effectiveness in relation to developing and scrutinising PHSO’s recent strategy, including the scale of its ambition and deliverability of the three core objectives;
- the most critical challenges facing the organisation and their governance implications;
- the current governance framework, especially how best to deploy the expertise of Board members; and
- existing governance practices and behaviours and how these might be improved.

The review found that the Board now operates with good and effective governance. Board members have shifted since 2017 from a forensic focus on operational concerns to more appropriate strategic and scrutiny behaviours. At the same time there was a recognition that there remained room to improve as well as a clear collective desire to do so.

Board processes and behaviours demonstrated trust and goodwill between the Ombudsman, Executive and Non-Executive directors.

Although the Board is non-statutory, and therefore technically only advisory to the Ombudsman, it is run in line with good practices in governance from across the public sector.

Areas for improvement raised during the review focused on improving the Board’s ability to challenge constructively at Board meetings, especially regarding cross-cutting issues that linked risks and operational performance. A few improvements were suggested and adopted, including demonstrating greater transparency and explaining the PHSO’s public impact, to help regain public trust in the organisation.

Board members also urged early and careful planning for senior leadership turnover, considering this activity to be essential to organisational sustainability and stability.

Board committees were seen to be functioning well, fulfilling their remits and assurance functions. Chairmanship of the committees was complimented and highly commended. Evidence from recent meeting minutes showed how each committee is conducted with probity, constructive challenge and good governance behaviours.

**4. Page 21 of your annual report describes “maintaining dialogue with... the Public Administration and Constitutional Affairs Committee” about your funding requirements. How do you propose to maintain such a dialogue to keep the Committee informed of your funding requirements? Is there anything of which you need to notify us?**

We are awaiting information from HM Treasury about what process they will be running for the next Comprehensive Spending Review (CSR). Once HM Treasury has published their process and timescales, we will begin preparing a bid.

To inform the bid, we are currently in the process of preparing a new 3-year corporate strategy. We will be consulting on this externally in the near future, but following the

oral evidence we recently gave to the Committee, I attach a draft outline. This remains a work in progress, although as you will see we have currently included some key draft objectives that would require investment. This includes helping embed the new Complaint Standards Framework and working with a university partner to develop a set of professional qualifications for staff that could also then be adapted for public sector complaints handlers more widely.

As we set out to the Committee in the oral evidence session, consultation so far suggests we could have a real impact on the quality of public sector complaint handling through this work, while also developing a framework that could be valuable for the ombudsman sector in general both nationally and internationally. Support in principle for our role in this area as part of the Committee's report on its scrutiny of our role could be valuable in our discussions with HM Treasury about the next CSR. We will discuss how this might be approached with the Committee Chair.

**5. In your written evidence, you describe the establishment of a new Expert Advisory Panel, which brings support and challenge to improve the organisation. Could you please provide more information on:**

- a. How the panel works in practice, and how the panel brings support and challenge to the PHSO;
- b. How long panel members' tenure lasts; and
- c. Whether you have plans to change the panel's membership from time to time, to ensure there is always fresh external challenge.

The Expert Advisory Panel provides a non-executive advisory function to the Ombudsman. Members are not PHSO employees and the Panel is not a decision-making forum. Members were selected on the basis of fair and open competition. The Panel is distinct from our Board and members offer challenge and support in general and in specific areas of PHSO's work where the Ombudsman would find that useful. This has included providing advice on casework-related matters and involvement in the development of the draft Complaint Standards Framework. Panel members are accountable directly to the Ombudsman and are called upon individually to work on projects and other activity as agreed by the Ombudsman. The Panel meets collectively from time-to-time.

Membership terms are limited to two years, with the option of annual extensions up to a total of five years. This will ensure the Panel's expertise is relevant to the changing priorities of the organisation and capable of being refreshed.

**6. Why does the PHSO use KPMG as its internal auditors, rather than the Government Internal Audit Agency?**

We are independent of Government and accountable directly to Parliament. We therefore ran a competitive procurement exercise to appoint internal auditors informed by the Government Internal Audit Agency's framework. Following this process, RSM replaced KPMG as our internal auditors.

## Handling of Mr Nic Hart's complaint

- 7. One of the failures identified in the review concerned handovers between caseworkers. The review notes that guidance says that caseworkers must produce written handover notes before leaving the organisation. What are you doing to ensure that this is done? Also, is it best practice within the PHSO for caseworkers to introduce their successor to complainants to help build trust?**

Managers now ensure that any staff member who is leaving PHSO produces handover notes about their cases and, where it is possible, will inform the complainant about who will be taking over responsibility for their case and when they will be in touch. All information, including a handover note, is available on our new Case Management System so that a caseworker picking up a case has access to all the relevant information relating to the case and the progress to-date.

- 8. Another failure that was highlighted was about communication with Mr Hart. The Committee often received submissions from the public concerned about the length of time for which they do not receive answers to their correspondence. Does the PHSO have target times to respond to correspondences, and if not, would you agree to include target times for correspondence in your KPIs, along with your Service Charter?**

Caseworkers aim to respond to correspondence from complainants within ten working days, although there are no target times set out in our KPIs or Service Charter specifically in relation to this. We will include this as an internal service standard in our Service Model Policy and Guidance, which we will publish on our website.

- 9. Mr Hart described his distress at the misplacing or potential misuse of his personal information and private information about his daughter. Has a full assessment been made of the risk to Mr Hart's personal data of the failure to follow the PHSO's data security procedures?**

This situation pertains to the use of a personal mailbox by Dr Bill Kirkup when working as an external investigator on the case. As we explained in the review, Dr Kirkup took this approach, authorised by previous senior managers, following a breakdown of trust between Mr Hart and the organisation. Mr Hart was offered the opportunity to communicate with Dr Kirkup using his personal email and mobile telephone number and he agreed to do this. Dr Kirkup has provided a detailed account of this issue in his note at Appendix C.

The use of a personal email account for case information was logged as a data incident in 2016. We identified that data handling policies were not being followed as information exchanged with Dr Kirkup to his personal email was not always replicated in the Case Management System. We therefore asked Dr Kirkup to return copies of all outstanding emails and these were stored against the complaint on our Case Management System.

- 10. Mr Hart explained to us that the PHSO failed to assure him that evidence he submitted was given the proper weight. How do the PHSO’s caseworkers seek to assure complainants that their evidence has been given proper weight? (For example, is all evidence the complainant submitted commented on, to actively demonstrate it has been considered?)**

In decision letters and investigation reports, we set out the evidence we relied on when explaining the decision we have made. On 7 May this year, we published [guidance](#) for complainants explaining the approach we take when considering and assessing evidence. Further training for casework staff about how to effectively balance evidence and explain our decisions is also under development as part of our commitment to continuous improvement.

- 11. Please could you set out each failing found by the review, the actions proposed to be taken in response (including those that had already been implemented by the time the review was completed) and target dates for completing any actions still outstanding.**

This is set out in Appendix A. We have also appended comments made by independent Expert Advisory Panel member James Titcombe on an early draft of the review of PHSO’s handling of Mr Nic Hart’s complaint (Appendix B).

### **Other matters**

- 12. The Committee has received representations critical of the PHSO’s lack of accommodation of complainants’ reasonable adjustments. What is the PHSO’s policy for complainants’ reasonable adjustments? Does the PHSO require complainants to justify their need for reasonable adjustments?**

Our policy for considering reasonable adjustments is set out below. We do not require complainants to justify their need, although we will talk to a complainant to understand their needs and if appropriate make an alternative suggestion based on our knowledge of our process as to how we can best accommodate this. Where it is not reasonable for us to agree an adjustment, we will try and find an alternative solution that will work for the complainant.

### **Requests for reasonable adjustments under the Equality Act 2010**

- 1.11 If we receive a request for a reasonable adjustment, at any stage of the casework process, then it must be fully considered under the Equality Act and its related Codes of Practice. (Legal requirement)
- 1.12 Any request for a reasonable adjustment should be added to the case. If we decide an adjustment is reasonable we should clearly record the individual’s disability, what reasonable adjustments are requested and when we agreed, on the complainants Dynamics 365 record. Selecting their disability type form from the drop down menu and recording the adjustment requested in the accessibility

and reasonable adjustment section. Any questions about agreeing an adjustment should be escalated through line-management. (Policy requirements)

- 1.13 If we decide an adjustment is not reasonable then we should record what was requested, when it was requested and the reasons why we determined it was not reasonable, in the accessibility and reasonable adjustment section on complainant's Dynamics 365 record. We should also consider if there are other ways we can assist the complainant. The Legal Team must be informed if we decide an adjustment is not reasonable. (Policy requirements)
- 1.14 A letter should be sent to the complainant confirming the outcome of the reasonable adjustment request and a copy of the letter should be attached to the complainant's Dynamics 365 record.
- 1.15 Assistance can be provided to caseworkers in considering a request for a reasonable adjustment by emailing [+edicasework@ombudsman.org.uk](mailto:+edicasework@ombudsman.org.uk).
- 1.16 All requests for additional accessibility outside of the Equality Act 2010 should be recorded in the accessibility section of the complainant's Dynamics 365 record.
- 1.17 If during our consideration of a case we are provided with information that suggests an adjustment to our service may be required, we should consider raising this with the complainant. (Policy requirement) For example, if a complainant's case refers to them being partially sighted, but they have not specified they want large font print, we may wish to ask if this is required.

**13. In one piece of written evidence, it was suggested to the Committee that the PHSO is not well-equipped to deal with complaints about HS2 Ltd. It was put to us that investigations into HS2 require specialist knowledge and a body should be established that can compel HS2 Ltd to “put things right” (rather than simply providing recommendations). What is your response to that?**

We do not agree that HS2 (or similar projects) should be taken out of the Ombudsman's remit. Taking functions away from PHSO confuses the redress landscape for service users and is in clear tension with the drive towards creating a single Public Service Ombudsman in England. We have established a high-risk case handling process to deal with issues arising from complex cases and can have a clear impact for the public when considering when things have gone wrong.

For example, in 2015 [we laid a report](#) before Parliament following an investigation we conducted that looked at HS2 Ltd's communication and engagement with a group of local residents. We found that overall HS2 Ltd's actions fell below the reasonable standards we would expect and constituted maladministration.

This prompted further scrutiny by Parliament into the concerns raised by the complainants that came to us. Your predecessor Committee [followed up our investigation](#) and found that, “PHSO's report exposed fundamental cultural problems with

the way that HS2 Ltd communicates with affected residents”. PACAC also noted that “we welcome the improvements made by HS2 Ltd to its complaints handling process since the publication of the PHSO report”.

As part of this follow-up inquiry HS2 confirmed to the Committee that these improvements had included instituting a 24 hour helpdesk for the public and mandatory training in complaints handling for all staff. The Government also highlighted to the Committee that in light of the report we had laid before Parliament it had “requested that HS2 Ltd present their plans to ministers to ensure that they are sufficiently robust to deal with the issues that the PHSO ... report identif[ies]”. This shows the clear impact that we can have in such cases.

We continue to receive complaints about HS2 and while we cannot comment on any current investigations, I can confirm to the Committee that we will highlight to it any significant issues that we identify and believe warrant further parliamentary scrutiny.

**14. One member of the public, who though not a member of WASPI submitted a complaint to DWP following their advice, has expressed frustration at the ongoing delay in investigating these cases. I note your website states that you cannot provide ongoing commentary as you must investigate in private but are you able to provide any expected timeframe for the six sample complaints to be investigated?**

Our investigation into these complaints was delayed by judicial proceedings which were intended to examine the same issues as we were to consider. Once we had examined the Court judgement, we took legal advice and found that delaying further to await the Court of Appeal outcome was not necessary, as we were considering different matters to those being considered by the Court. Our investigation therefore commenced on 18 March 2020.

We are not able to give a precise timeframe for the investigation of the six sample complaints as this will be determined by its complexity and the amount of evidence we receive. We aim to complete the investigation in a timely manner, whilst also ensuring that we thoroughly consider the issues set out in the six sample complaints.

#### **Additional information relating to the Service Charter**

During the scrutiny hearing, the Committee also considered the Service Charter, which sets out feedback from complainants and organisations about their experience of PHSO’s service. On the recommendation of your predecessor committee, we commissioned an independent research agency to look at how best we can seek feedback on whether complainants feel the service we provide is impartial. We will be publishing the findings of this research on our website shortly and it is appended to this letter.

Overall, the research concluded that PHSO should combine the feedback we already receive from complainants and organisations on a number of key Service Charter commitments that directly relate to fairness. This total score will give a well-rounded score on whether PHSO has demonstrated it has acted fairly. We will therefore take the average of the scores on Service Charter commitments 5, 8, 9 and 11 to provide an

overall score on whether our users feel we are making fair and impartial decisions. This will be included in our regular quarterly reporting on our Service Charter later in 2020.

I would be happy to discuss any of these issues in more detail. Please contact my Assistant Private Secretary, Faye Glover, [faye.glover@ombudsman.org.uk](mailto:faye.glover@ombudsman.org.uk) should you wish to arrange a phone call or meeting.

Yours sincerely,

Rob Behrens

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Rob Behrens CBE  
Ombudsman and Chair  
Parliamentary and Health Service Ombudsman

**Appendices:**

- A. Summary of failings identified in PHSO's handling of Mr Nic Hart's complaint, and action taken in response**
- B. Comments made by independent Expert Advisory Panel member James Titcombe on an early draft of the review of PHSO's handling of Mr Nic Hart's complaint**
- C. Dr Bill Kirkup's response to Mr Nic Hart's written evidence to PACAC's scrutiny inquiry**
- D. Summary of findings of independent research into measuring complainants' views on PHSO's impartiality**
- E. First draft of 2021-24 PHSO Corporate Strategy**