House of Commons

Public Administration and Constitutional Affairs Committee

Parliamentary and Health Service Ombudsman Scrutiny 2020–21: PHSO and Government responses to the Committee's First Report

Third Special Report of Session 2022–23

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Public Administration and Constitutional Affairs Committee

The Public Administration and Constitutional Affairs Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith; to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service; and to consider constitutional affairs.

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Third Special Report

The Public Administration and Constitutional Affairs Committee published its First Report of Session 2022–23, Parliamentary and Health Service Ombudsman Scrutiny 2020-21 (HC 213) on 20 May 2022. The Parliamentary and Health Service Ombudsman (PHSO) response was received on 7 July 2022 and the Government's response was received on 20 July 2022. Both are appended below.

Appendix 1: Parliamentary and Health Service Ombudsman response

PHSO's casework

Recommendation

1. **The PHSO should more clearly notify visitors to its website which cases are not being considered under this new policy and further update the Committee on the review outlined to the Committee during the oral evidence session. The PHSO should also update the Committee on any prioritisation actions it is taking to ensure that the most severe cases are considered with all due haste.**

Response

Since April 2021, we have focussed PHSO's resources on the more serious health complaints, in line with an approach already widely used across the Ombudsman sector. In practice, we have continued to examine all complaints brought to PHSO, and tried to quickly resolve those we are able to. If we are not able to resolve complaints quickly, and the claimed injustice is more limited and does not have an impact on wider learning or systemic issues, we do not consider the complaint further. This applies only to complaints about the NHS. In autumn 2021, we reviewed this approach and decided to continue with it for a further 12 months. This strategy has been successful in helping to reduce the queue from over 3,200 unallocated complaints in April 2021 to around 2,400 in June 2022; this is despite the number of incoming complaints rising by 24% compared to before the pandemic. In autumn 2022, we will undertake a final review considering 18 months of data and ensure that we have sufficient evidence to make a robust decision about our long-term approach.

We welcome the Committee's feedback on how we can communicate more clearly with members of the public through the PHSO website about our approach to handling less serious cases. We will review not only the relevant content on our website to make it more prominent and easier to understand, but also look at wider changes to users' experience of the website to improve people's understanding and experience of PHSO's service. This will involve updating several areas of the website to ensure changes are consistent throughout and will be completed by September 2022.

To ensure we offer a fair and equitable service, PHSO investigates complaints that come to us in the order that they are received. As a rule, we do not prioritise cases based on

their level of severity. We will however prioritise cases in exceptional circumstances. These include cases where there is an ongoing safety or safeguarding issue, or where the complainant has a terminal illness, is experiencing an ongoing impact to their health because of the subject matter of the complaint, or is in severe financial hardship (and the complaint is about a financial loss).

In addition, where there are particular reasons for prioritisation, for example related to the complainant's wellbeing, cases are carefully managed and monitored. We have clear policies in place for escalating and reporting issues, such as when a complainant may be at risk of self- harm. More complex cases are directed to specialist senior casework teams who have additional training that enables them to investigate complex cases effectively. These cases may take longer to close, as they often require consideration of additional evidence or specialist clinical or legal advice.

Recommendation

2. **The PHSO should also consider developing and reporting against timeliness targets for each grade of "severity of injustice" to better monitor the impact of the backlog on higher category cases in levels 3 to 6.**

Response

Our Severity of Injustice scale was developed to determine an appropriate level of financial remedy after the conclusion of the investigation, in the small number of detailed investigation cases where a financial remedy is one of the outcomes sought. While we have been able to use it to determine cases that are level 1 or 2 at triage as part of our demand management approach, it would take a significant amount of additional work to identify where a case fitted between level 3 and 6 at intake, as this determination happens once the complaint has been investigated and we have a more nuanced understanding of the impact of the failings on the complainant. We will however look at whether we can provide more granular information on our website to give members of the public and MPs a more specific indication of how long it may take for their case to be looked at.

Recommendation

3. **The PHSO should set out how it plans to address the three-long term, low performing scores relating to how evidence is gathered, how decisions are reached and how decisions are made in a timely final decision.**

Response

The Service Charter provides a valuable source of feedback about people's experiences of PHSO's service. We are committed to improving people's experience of PHSO's service and, in turn, improving these three low-performing scores. However, as we advised the Committee at the oral evidence hearing on 14 December 2021, there are a number of different factors that influence complainants' feedback, including whether PHSO reached the decision they were hoping for.

As part of PHSO's quality assurance of complaint handling, we look at how effectively we have evaluated all available evidence to make an impartial decision. This takes account

of whether we have gathered all the relevant evidence. It also considers whether we have carried out a sufficiently impartial, detailed, and critical analysis to reach a robust decision. We continue to train and develop new staff in order to maintain this consistently high level of impartiality and effective evaluation of evidence.

We expect Service Charter scores in relation to timely decisions to improve as we reduce waiting times for cases to be allocated and also the time it takes to close cases. We have plans in place to continue reducing the current queue of cases in the coming year by recruiting and training new caseworkers, and by focusing resources on completing oldest cases first. We are also in the early stages of developing a significant new programme of casework improvements, including a new digital casework service that is automated, where possible, to improve efficiency while ensuring our service remains accessible and easy to use for all.

Please also see our response to recommendations four and five, below.

Recommendations

4. **The Committee recommends that the PHSO learns from and implements best practice at the Local Government and Social Care Ombudsman by publishing feedback scores about its service, split between those complainants who were happy with the result of their case and those who were not. This will allow for a better understanding of the service levels provided by the PHSO and provide a more accurate metric by which its service delivery can be assessed.**

5. **The Committee notes the need to clarify the wording of Service Charter questions by providing additional context to PHSO users so that they can better understand what the relevant scores mean in terms of service delivery.**

Response

Later in 2022–23, we will commence a review of how PHSO obtains feedback from service users on performance against the Service Charter commitments.

This initiative will include:

- working with an independent research agency to review historical data to understand why changes and improvements to PHSO's service have not led to improved Service Charter scores;
- asking the research agency to review the complainant survey and provide recommendations on how it can be improved;
- undertaking an internal comparative review of PHSO's Quality Standards approach and the complainant survey to identify where there is alignment and correlation between the two sets of feedback, where this is lacking and to identify if improvements can be made; and
- using PHSO's Public and User Advisory Group, once it is established later this year, to improve PHSO's understanding of the reasons why service users have given positive or negative feedback.

This work is in the early stages of planning. Although it is too early to be able to make specific commitments about what changes will result, it may include revisions to the wording of the complainant survey questions to remove any ambiguities.

We recognise that disaggregating complainant survey results by the decision received would help us understand how the decision a complainant receives affects their experience of PHSO's service. However, unlike the LGSCO, our survey covers all stages of PHSO's process, including enquiries and complaints which are resolved very quickly, without an investigation. As decisions to uphold or not uphold a complaint are made only where a full investigation has been undertaken, the pool of complainants to survey at this stage is reduced. The methodology for PHSO's survey differs from LGSCO's in a number of other respects, so whilst it is a useful comparator in many ways, the LGSCO's approach is not directly transferable to PHSO's customer satisfaction survey. We will, however, consider the viability of the Committee's recommendation with the support of the independent research agency.

Staff management

Recommendation

6. **Prior to the next scrutiny session, the PHSO should update the Committee on progress against the implementation of the Donaldson Review, outlining how many areas remain outstanding and its proposed steps and timeline to address them. In this update, the PHSO should outline what actions it has taken to embed lessons on complex case handling to its wider casework, including other technical casework areas.**

Response

PHSO commissioned Sir Liam Donaldson and Sir Alex Allan in 2018 to review PHSO's approach to using specialist clinical advice in casework. To date, PHSO has delivered and fulfilled 22 of the 25 recommendations of the Clinical Advice Review. We are currently progressing the remaining three recommendations, as set out below.

We are carrying out a phased roll-out of the sharing of provisional view reports with clinical advisers and applying lessons learnt to future phases. This will enable us to understand the costs and benefits of this approach. Early data from the phased roll-out with senior caseworkers found that 83% of participating clinical advisers said that being able to see the provisional view made them feel more engaged with PHSO. Feedback also showed that clinicians were content with the manner in which their advice had been considered and applied. We now plan to pilot this model with the broader casework population during 2022–23, but will need to ensure that we do so in a way that supports PHSO's work to reduce waiting times for complainants.

We are introducing surveys for clinical advisers to comment on the quality of requests from caseworkers and for caseworkers to comment on the quality of clinical advisers' responses. Through piloting the surveys, we found that maximum value would be achieved by rolling these out alongside a wider range of quality measures. As above, changes of this nature can have a short-term effect on operational productivity. We will carefully consider when and how to implement this change, to manage the impact it may have

on reducing the queue of complaints waiting to be looked at by a caseworker. However, we have introduced a quality review by a lead clinician of clinical advice requested and received from our external advisers, so that any issues can be quicky identified. Internal advisers undergo in-house quality assurance checks.

The Clinical Advice Review also recommended that PHSO consider whether clinicians should be named in PHSO's decision reports. We considered the risk that clinical advisers may be subject to vexatious referrals to their professional regulator from complainants who disagree with their professional advice. We also considered the risk that they could be approached directly by dissatisfied complainants, or could be publicly denounced online by those disagreeing with our decisions.

We discussed with professional regulators the possibility of a protocol about dealing with vexatious referrals. They advised that they could not offer a special protocol or guarantee to protect clinical advisers in such circumstances. Many other bodies who use expert clinical advice, such as the professional health regulators, do not routinely name their clinical advisers in casework considerations.

A Tribunal decision is awaited about a request made under the Freedom of Information Act seeking the names of certain other (non clinical) PHSO colleagues. We anticipate a decision in Quarter 2 or 3 of 2022–23, and we will then consider the outcome of this case as we consider the possibility of naming clinical advisers in decision reports.

Looking more generally at clinical advice, we have also appointed a Senior Lead Clinician to provide senior clinical oversight on complex cases and embed learning from the Clinical Advice Review within casework teams. We now have a multi-disciplinary (MDT) approach to high-risk case management which includes senior clinical input in case discussions, prompt recruitment of suitable clinical advisers and exploring different approaches to these cases such as mediation.

This work is shared widely with casework teams through casework discussion forums and through lead clinician promotion of MDT working, involvement in review of clinical advice submissions and learning and development opportunities.

Recommendation

7. **The Committee welcomes the progress of the PHSO's commitment to a diverse workforce. We are pleased by the pledge of continuous improvement in this area and look forward to hearing about further progress in the coming years.**

Response

As we start implementing PHSO's new People Strategy, the focus is to strive for an inclusive colleague community. We have been integrating best practice into our recent recruitment drive. During 2021–22, 27.7% of appointed candidates were from Asian, Black, Mixed Ethnicity and Other Ethnic Groups. We have implemented a range of activities, including training all of PHSO's hiring managers in how to ensure a fair, transparent and inclusive recruitment process, and we are evaluating performance on a monthly basis as we aim to

improve the reach of our recruitment campaigns and strive for greater diversity. We will also shortly be undertaking a strategic review of recruitment and retention as we design a new HR system.

Value for money

Recommendation

8. **The Committee is pleased the PHSO is conducting a pilot to evaluate the implications of new working practices. The Committee will continue to monitor developments as the PHSO considers its future operating model to ensure it secures value for money from the resources it uses. Proper regard should be given to staff welfare concerns with home working which should not be an assumption in any new working model.**

Response

We have recently completed a six-month pilot, which required staff to come into the office a minimum of two days per week pro rata, to develop an evidence base for a longer-term hybrid model of working. We are currently evaluating the pilot, including through a series of focus groups with staff across the organisation and an all-staff survey that will explore the impact on PHSO's culture. We will also be looking at what other organisations have been doing and considering their experiences.

During the pilot, we commissioned an independent survey to explore how we have adapted to hybrid working. The results were positive and included:

- Over 88% of staff saying they have access to training and/or support that helps them to work in a mobile/flexible way
- 85% of staff saying they have the technology, tools and infrastructure that enable them to work across different locations outside the office
- 74% of staff saying the culture of the organisation is supportive to working in a mobile/flexible way

We expect to report on this evaluation in the autumn, when we will set out working arrangements into the medium term.

Recommendation

9. **The Committee reiterates its previous call to undertake a peer review, and recommends that the PHSO do so as soon as possible and on a more regular basis to ensure continued value for money.**

Response

PHSO has commissioned a peer review to be carried out this year. As the panel is independent, the Chair–once appointed - will appoint the remaining members of the panel. The peer review will consider PHSO's effectiveness including value for money. We will work with the panel to agree the terms of reference for the review.

PHSO is leading work with the International Ombudsman Institute (IOI) to strengthen and promote peer review across the Ombudsman sector. In May 2022, the IOI adopted the Manchester Memorandum which sets out a policy commitment to introduce peer review across all IOI members. This work is in progress, with PHSO's approach to peer review seen as a model for other Ombudsman schemes to follow. The IOI is currently developing a pool of peer reviewers, to make it easier to appoint knowledgeable, qualified and willing chairs and panel members to Ombudsman peer reviews. Dr Tom Frawley, former Northern Ireland Ombudsman, has been appointed to validate peer reviewers.

In April 2020, the IOI published a good practice framework for peer review. This makes clear that the timing of each peer review process should be determined by the specific context in which each Ombudsman scheme operates. For instance, peer review may offer particularly valuable insights at the start of a period of transformation, or after major changes to an operating model. PHSO is committed to carrying out regular peer reviews, to provide an independent assessment of our effectiveness and value for money. We will be led by international standards of good practice in determining the exact timing of future peer reviews.

Recommendations

10. **The Government has to take the issue of Ombudsman reform seriously and provide legislative action. We urge the Government to set out a legislative timetable before the end of this year, and seek to deliver the necessary reforms before the end of this Parliament.**

11. **On the removal of the MP filter, the Committee believes that detailed consultation is required to ensure there aren't barriers between complainants and the Ombudsman, but also that the link between MPs and their constituents on important matters such as these is not severed.**

Response

We fully endorse the Committee's recommendation urging the Government to take legislative action to reform UK public service Ombudsman schemes. This much-needed reform was recommended by the Committee in July 2020 and January 2021, as well as by PACAC's predecessor committees. A modern Ombudsman service with updated powers is essential, not only to improve access to justice, but also to ensure public services are supported and challenged to learn from the COVID-19 pandemic.

Wholesale, fundamental reform is now urgently required to create a new, modernised, integrated Public Service Ombudsman. PHSO's outdated powers put the UK and England out of step with international benchmarks of good practice, as defined in the Venice Principles on the Protection and Promotion of the Ombudsman Institution. These

were adopted by the United Nations General Assembly in December 2020, following a resolution co-sponsored by the UK Government. Despite this, we have been informed by Government, on several occasions, that no Parliamentary time is available during this Parliament to bring forward a Public Service Ombudsman Bill.

In its absence, we are seeking opportunities in current legislation to achieve incremental reform to PHSO's service. We welcome provisions in the draft Victims Bill to remove the MP filter for complainants who have been a victim of crime. This will improve their access to justice, as they will be able to bring complaints directly to PHSO in future. We have greatly valued the support of the Government in bringing forward this legislation. However, it is imperative that the Government also looks to remove the MP filter for all complaints about Government departments to ensure that everyone receives the same high-quality accessible service.

We understand and value the important role that MPs play in advocating for complainants. Should the Victims' Bill, including the clauses to remove the MP filter, receive Royal Assent, we plan to engage with MPs and members of the public to inform PHSO's approach to enacting the removal of the MP filter. We are exploring different options including introducing a 'dual track' approach that would remove the MP filter as a requirement but maintain the option for members of the public to refer their complaint via an MP if they wished to. We would welcome the Committee's views in shaping these proposals.

Recommendation

12. **The PHSO has outlined to the Committee evaluative criteria for the 2021–22 period and explained the delays to the launch of their new strategy. The Committee will continue to monitor the PHSO's delivery against its 2022–25 corporate strategy.**

Response

We formally launched PHSO's Corporate Strategy for 2022–25 on 7 April 2022, and have been holding internal and external stakeholder events to communicate and engage on our plans. This followed a bridging plan during 2021–22, established in response to circumstances resulting from the pandemic. At the next oral evidence hearing, we will update the Committee on the implementation of the 2022–23 Business Plan and how this is supporting the delivery of objectives in our Corporate Strategy.

Appendix 2: Government response

Letter from Lord True CBE, Minister of State, Cabinet Office, to William Wragg MP, Chair, Public Administration and Constitutional Affairs Committee, dated 20 July 2022

Thank you for your committee's report considering the Parliamentary and Health Service Ombudsman's performance for 2020-21.

I note that there is one recommendation for HM Government:

> "The Government has to take the issue of Ombudsman reform seriously and provide legislative action. We urge the Government to set out a legislative timetable before the end of this year, and seek to deliver the necessary reforms before the end of this Parliament."

I agree that Ombudsman reform is an important matter. The Government has a number of key priority areas for its legislative programme and as your report notes, wide-scale Ombudsman reform is not included at the current time.

The Government continues to consider options for Ombudsman reform. The Queen's speech announced a Victims Bill and the consultation, *Delivering Justice for Victims,* sets out HM Government's intention to remove the requirement for victims of crime to raise a complaint through a Member of Parliament via primary legislation. The Bill will be introduced to Parliament in due course.

Should the Government wish to make proposals for wider Ombudsman reform, I will of course engage with your committee, recognising your important role in holding the Parliamentary and Health Service Ombudsman to account.