

## Written evidence from Trevor Mayes (PHS306)

### Public Administration and Constitutional Affairs Committee Parliamentary and Health Service Ombudsman Scrutiny 2021-22

#### Introduction

This is about the failure of the PHSO to comply with Article 6 and Section 6 of the Human Rights Act with regard to its decision-making process. Moreover that if a complainant committed the same acts they would be liable for contempt of court proceedings.

#### Evidence

I complained to the PHSO about a Government Body (GB), and my complaint was referred to a PHSO caseworker who decided they could see no wrongdoing.

I immediately complained about this decision and the failure to provide a copy of Document A that was referred to and material to the decision that was made. The failure to provide Document A as evidence goes against all stated PHSO procedures.

The importance of Document A is that it concluded that there was wrongdoing but it was not serious enough to take any action, which is an arguable point. This is different from the GB subsequently contradicting itself by stating that such action is perfectly lawful which is factually untrue.

The PHSO misrepresented Document A and used it to justify the decision that they could see no wrongdoing. My evidence was ignored and no reference was made to relevant facts, laws, or rules as part of a fact-based decision-making process. Their decision was based on second-hand contradictory opinions provided by the GB some of which were outside the remit of both the GB and the PHSO.

I made four attempts without success to obtain a copy of Document A in accordance with PHSO procedures concerning evidence. In reply, the PHSO claimed that it was within the evidence I had sent to them when there could be no doubt that was not the case.

The Committee should not underestimate the damage that can be done to complainants subject to this conduct by those in a position of authority and trust.

In what the PHSO call a 'review' as opposed to the usual definition and use of this word as a noun or a verb, none of my complaints concerning the handling of my case was addressed. It was a denial and obstruction of accountability that confirmed the above conduct was a conscious and deliberate act.

Moreover, I can only state the obvious by saying there is no case supervision or accountability for this conduct which is cultural and systemic within the PHSO.

Evidence for this is that the PHSO's legal department sent me an email stating that an anonymised version of the decision concerning my complaint may be published on the internet. This was part of their campaign to increase the transparency of their decision-making process. My objections to this were ignored.

Further evidence is that I then made a Subject Access Request SAR to the PHSO to provide a copy of Document A under the Data Protection Act DPA 2018.

A PHSO Data Protection Officer (DPO) revealed that Document A had been sent by the GB on a strict undertaking of confidentiality. That I as the data subject was not to know that they had provided Document A nor make public any use of its contents. Therefore, the use of this data was unlawful.

The reason why Document A was withheld is that the PHSO gave an undertaking of confidentiality to the GB and then unlawfully broke it to justify a decision devoid of any fact, law, rule, or reasoned logic. The PHSO then abused its position and power to conceal its conduct and prevent accountability. They refused to provide a copy of Document A claiming it was a matter for the GB.

I gave the PHSO's DPO, management, and legal department 28 days to comply with my right under the DPA to demand they destroy all my data that included the unlawful use of Document A including the PHSO's decision regarding my complaint.

Despite two further requests the PHSO has failed to explain why this conduct is lawful and as a result, this matter is now subject to another complaint to the PHSO signed by my MP.

I have had confirmation that my complaint has been accepted and will progress to the next stage. As a key performance indicator, it is an absurd merry-go-round that takes several years and is a waste of public money that could be used on due process.

Irrespective of the merits of this complaint, the PHSO must recuse itself to comply with Article 6 of the HRA the right to a fair hearing.

It cannot decide on matters where it has a self-interest, least of all where there is evidence of serious wrongdoing by its officers.

This is a structural contravention of Article 6 and Section 6 of the Human Rights Act HRA 1998. In this respect, there is a need for serious reform and better scrutiny.

If a complainant committed similar acts they would be subject to Section 9 of the Parliamentary Commissioner Act 1967 states: "*Obstruction and contempt.*"

*(1 ) If any person without lawful excuse obstructs the Commissioner or any officer of the Commissioner in the performance of his functions under this Act, or is guilty of any act or omission in relation to an investigation under this Act which, if that investigation were a proceeding in the Court, would constitute contempt of court, the Commissioner may certify the offence to the Court.”*

However, according to GOV.UK “ ‘Contempt of court’ happens when someone risks unfairly influencing a court case. It may stop somebody from getting a fair trial and can affect a trial’s outcome.” And, includes court officers or personnel including those not directly involved.

Therefore, the same applies to the Commissioner or any officer of the Commissioner in the performance of his functions under this Act.

There is no process for the PHSO to recuse itself from making decisions in its own interest nor for the appropriate reporting of its Commissioner or officers for contempt. Complaints are held to a far higher standard than those who make the decisions for whom the rules or the law do not apply.

PHSO’s strategy 2022 to 2025

*“A voice for improvement in public services*

*Our strategy sets out our vision to be a voice for improvement in public services. We will achieve this by providing an independent, impartial and fair complaints handling service, as an internationally respected public services ombudsman.”*

This is regulation by soundbite, the reality is that the PHSO is part of the problem and not the solution to better regulation. Strategies and objectives are for display purposes only and are ignored when it suits the PHSO.

It is evident that complainants can only get a voice and a fair hearing with a Human Rights Ombudsman that does not make decisions on complaints. The two must be separate to avoid this situation. Moreover, to hold the PHSO to account as current arrangements are inadequate to the point of structural censorship and concealment.

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