

## Written evidence from David Czarnetzki (PHS20)

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

The following demonstrates PHSO issues relating to the evidence sought by the committee.

#### Efficiency

On 28<sup>th</sup> April 2022, I made a freedom of information request to PHSO asking for sight of the 2021 staff survey

On 9<sup>th</sup> May 2022, I received a response from PHSO stating the information was exempt from disclosure as *"it is intended for future publication and publication is planned before the end of June 2022"*

The survey was not published in June as indicated. On 19<sup>th</sup> July 2022, I asked PHSO to review the request.

On 5<sup>th</sup> August 2022, PHSO responded as follows: *"I have checked with my colleagues who are in charge of the staff survey and they confirm there is still an intention to publish the results, but there was a delay because further work was required before it was suitable to publish. They also informed me that the results are due to be published in August"*. The survey results were not published in August.

I complained to the Information Commissioner's Office concerning the continued failure to publish the survey results. The Commissioner replied, on 13<sup>th</sup> October 2022, including the following at paragraph 23 of their response:

*"The Commissioner acknowledges the complainants argument that the 2021 results require publication before the end of the year so that individuals would have sight of them before making submissions to the Public Administration and Constitutional Affairs Committee. However, the 2021 staff survey has now been published"*.

At minute 11 of the PHSO Board meeting of 23<sup>rd</sup> March 2022 it states: *"The Board received a paper setting out the high-level results of the 2021 staff survey"*.

It has previously been the practice at PHSO to release the results of the staff survey, held in October/November each year, the following March.

I invite the committee to revisit my evidence from last year (reference PH00033). Within that evidence, I highlighted a similar FOI issue and also reported to the committee that the 2020 staff survey, published in March 2021, revealed:

17% of staff had either suffered discrimination or preferred not to say

17% of staff has suffered bullying or harassment or preferred not to say.

PHSO annual report for 2021-22 reveals staff turnover was 16% for the year. This figure is almost identical to that of employees who either felt they have suffered discrimination, bullying or harassment or preferred not to say when surveyed. The Ombudsman, in his report, chooses to attribute the whole of the staff turnover to recovery in the jobs market following Covid rather than examine his internal people management processes.

In the 2021 staff survey, now published, 13% of staff felt they have suffered discrimination or prefer not to say. 14% have been bullied, harassed or preferred not to say.

Whilst the percentages seem to have fallen from the previous years' staff survey, PHSO report a substantial increase in the staff headcount. This leads to the inference that roughly the same staff numbers are suffering such abuse.

On page 36 of the annual report, PHSO released figures to show that, within statutory limitations, they responded to 93% of Freedom of Information requests in 2018-19 but only 51% in 2021-22. Examination of the percentages reveals that 338 of 364 requests were so answered in 2018-19 but only 253 of 498 requests met the criteria in 2021-22.

A similar situation is revealed with subject access requests. 95% of SAR's were dealt with within statutory limitations in 2018-19, gradually falling to 45% in 2021-22. This translates to 291 of 307 requests dealt with in 2018-19 falling to 129 of 288 requests in 2021-22.

Taken together, these figures show that PHSO managed, within statutory limitations, to deal with 629 requests regarding Freedom of Information and Subject Access Requests in 2018-19, yet only 382 such requests in 2021-22.

The issues revealed show why timely publication of documents such as the annual staff survey is important. Had the Ombudsman published the results of the 2021 staff survey in March, as has been previous practice, There would have been no need for me to make two Freedom of Information requests or involved the Information Commissioner.

## **Effectiveness**

It is a matter of public record that:

- The Ombudsman wrote to the Chair of PACAC on 29<sup>th</sup> June 2022 regarding a failure of the Environment Agency to comply with PHSO's recommendations in the 'Earl Report'.
- The Chair of PACAC wrote to Sir James Bevan, Chief Executive of the Environment Agency on 19<sup>th</sup> July 2022. This letter requested the Agency lay a statement before Parliament by, at the latest, Monday 12<sup>th</sup> September 2022, setting out the reasons why the PHSO's recommendations have not been complied with in full.

The letter from the Chair of PACAC was published within the correspondence section of PACAC's enquiry into the PHSO 2020-21 annual report. That enquiry has now been closed now the 2021-22 PACAC enquiry is open. I can find no trace of any response from the

Environment Agency and, on 12<sup>th</sup> October, lodged a freedom of information request with the House of Commons FOI team, via the PACAC clerks, asking if such response has been made. No reply has been received from PACAC clerks or HoC FOI team as I write.

No case demonstrates more clearly the ineffectiveness of the Ombudsman to hold the NHS and Government Departments to account. It also provides an example of the limitations of the Select Committee. Interested members of the public will take note and draw their own conclusions as to whether the process is fit for purpose or not. A complete review of Ombudsman legislation is required.

### **The illusion of an independent Ombudsman**

PACAC last held its scrutiny of the Parliamentary and Health Service Ombudsman on 14<sup>th</sup> December 2021. That same day, the Committee Chair wrote to the Chancellor of the Duchy of Lancaster expressing the view the committee could see no issues to prevent the Ombudsman continuing in post after March 2022 (later confirmed by the Cabinet Office).

On 15<sup>th</sup> December 2021, just one day later, the PHSO Board held a meeting. Minute 6.3 of the meeting states:

*“The Board was informed Rob Behrens had been appointed as Chair of Governors at Anglia Ruskin University”.*

Minute 6.4 shows the appointment was registered in the register of Board Members Interests.

Within the vision and strategy section of the 2021-22 annual report, the Ombudsman states he is a voice for improvement in public services through the provision of an independent, impartial and fair complaints handling service.

Organisations the Ombudsman is permitted to investigate include:

Department for Education  
Office of Qualifications and Examinations Regulation  
Health and Safety Executive  
Information Commissioner.

The Ombudsman’s published statistics show that in 2021-22, he received, in total, complaints relating to:

Department for Education - 212  
Office of Qualifications and Examinations Regulation – 18  
Health and Safety Executive – 32  
Information Commissioners Office - 254

It is not beyond possibility that Anglia Ruskin University, like any other university, could find itself involved in an Ombudsman investigation as a result of maladministration by any of these organisations.

Two simple potential examples:

A complaint to PHSO about an inadequate investigation by HSE into an accident involving death at Anglia Ruskin University

An allegation the ICO did not properly address a data breach there.

It has to be of concern that:

There is no record of his appointment as Chair of Governors of Anglia Ruskin University either being notified to, or approved by, PACAC on behalf of Parliament.

The Ombudsman has no power to delegate any such investigation to a third party. He is the final arbiter.

Confidence any such investigation into universities, particularly Anglia Ruskin University, is compromised by this appointment as the Chair of Governors.

The appointment, whether remunerated or not, has to be a distraction from the Ombudsman's full-time core function.

The optics of this secondary appointment does little to inspire public confidence in the Ombudsman or his impartiality as final arbiter.

*November 2022*