Written evidence from David Walford (PHS29)

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

Introduction

My name is David Walford, and I am a volunteer at a NHS Hospital.

In March 2018, I received a demand for money from a Private Parking Company (PPC) appointed by this Hospital. The civil courts would later agree that their demand was completely unjustified and that it had been pursued with deliberately misleading evidence. I would later help remedy a similar injustice suffered by another volunteer at the Hospital, Mr [*name redacted*].

However, when we complained to the Hospital, they at first ignored then dismissed our evidence. When that position became untenable, the Hospital denied all responsibility for holding their private contractors to account. I therefore first escalated our complaint to the PHSO in March 2019.

The PHSO are now on their fourth case review. In all that time, they have done absolutely nothing to challenge the Hospital's position. The PHSO have required eight months to assign our latest caseworker. Their remit is now to determine if the Hospital maintain their previous position, despite our assurances that absolutely nothing has changed over the past three years and six months.

I understand that the PACAC cannot investigate individual cases, so I have neither identified the Hospital nor any individuals involved, and only referred to facts that have already been published. However, should the PACAC have the slightest reason to doubt the truth of what follows, then we ask that the PHSO are invited to put our case before Parliament. If they refuse, then we trust that our story will be accepted at face value, and that our experience will be considered typical for all those who discover that the PHSO is there to protect public organisations from the public.

Wider context

Since 2015, NHS car parking guidance[1] has stated that NHS organisations are responsible for the actions of private contractors who run car parks on their behalf, that NHS organisations should act against rogue contractors, and that income should not depend on the number of charges issued.

We consider that those protections are essential for all NHS staff, volunteers, visitors, and most importantly, vulnerable patients. The demands for money which we received felt intimidating, and allowed us only 28 days to respond before additional debt recovery

[1]https://www.gov.uk/government/publications/nhs-patient-visitor-and-staff-car-parking-principles/nhs-patient-visitor-and-staff-car-parking-principles

charges might have applied.

We now know that consumer protection law sets a high bar for the such demands, that it is very difficult to justify any debt recovery charge without a civil court order, and that losing a civil claim does not result in a criminal record. However, the PACAC will no doubt understand that very few NHS staff and patients would have the time, knowledge, and energy to challenge those first impressions and misconceptions, rather than just pay an unfair demand without protest.

NHS car parking guidance considers that private parking trade associations and their appeal service providers offer some protection against rogue operators. In our cases, they did not.

The appeals service we were directed towards did not meet any statutory definition[2], and could not themselves cancel any charge on the basis of mitigating circumstances. When we demonstrated how the PPC concerned had sent similar misleading, irrelevant, and falsified evidence in both cases, the appeals service declined to investigate.

The relevant trade association also declined to investigate our allegations. When presented with the court judgement transcript vindicating the evidence, their Senior Compliance Investigations Office responded that they were *"not legally trained"* and that *"nor are we a regulatory body"*.

Unfortunately, a rogue contractor need only pay their trade association fees for the DVLA to allow them unrestricted electronic access to the personal data necessary to pursue bogus charges. The DVLA ignored us and the court judgement, so we explained the data protection issues to the ICO. The ICO have recently concluded that the DVLA have no responsibility whatsoever to consider if the data requests that they receive from private parking companies have any legal justification.

The situation for all car park users is worse than envisioned eleven years ago, by Mr Neville John Metson in his submission to the Transport Select Committee[3]. Our only option to challenge both the DVLA and the ICO, short of a private criminal prosecution, is to escalate our complaint to the PHSO. Therefore all NHS staff, volunteers, and service users can only rely on the courts and the NHS to protect them against dishonest private parking companies operating on their land.

The NHS is itself part of the problem when perpetuating the myth that such parking charges are purely a matter between the car park user and the contractor. It is only the landowner who can authorise legal proceedings, the parking contractor cannot themselves take anyone to court without explicit, written authorisation from the NHS.

However, parking companies are not the only private contractors who work for the NHS. When an organisation has no coherent policy to manage their private contractors, or to hold them to account even when presented with court-tested evidence of dishonesty, then we believe that such a culture allows far more serious harms than simple fraud to develop and

[2]https://www.legislation.gov.uk/uksi/2015/542/contents/made
[3]https://publications.parliament.uk/pa/cm201012/cmselect/cmtran/writev/dda/dda09.htm

thrive.

Our experience

We first wrote to the Hospital's CEO in June 2018, trusting that they would be concerned to hear of their parking contractor's behaviour. The CEO allocated our complaint investigation to the Head of Car Parking and Security (HCPS), who met with us once four months later. By prior agreement we recorded this meeting, and the minutes we circulated afterwards remain undisputed.

During this meeting, the HCPS assured us that ours were the first complaints about this PPC that they were aware of. We presented copies of the falsified evidence which the PPC had submitted to the appeals service, but the HCPS would not accept these as true copies. Therefore we concluded by agreeing that the HCPS would obtain the same evidence directly from the PPC on our behalf, at which point a further meeting would be arranged with all involved.

What the HCPS did not disclose, and we later discovered via Freedom of Information responses, was that the Hospital had received 97 other parking complaints since this PPC was appointed. Of the 17,700 charges issued by the PPC, 2,000 had been informally withdrawn. They did not refute my later witness statement that only 57% of their charges were upheld when challenged.

The contract between the Hospital and the PPC revealed that, not only were the PPC receiving income from parking tickets alone, the Hospital would receive 10% of their operating profits. The courts would later agree that the Hospital's own parking policy, written by the HCPS, made plain that both tickets we received were completely unjustified.

We wrote to the HCPS four times over the following three months, but received no response. We copied the CEO, only receiving a response on the third occasion, at which point they handed the stalled investigation to the Deputy HCPS. In brief, their conclusion two months later was that the PPC were too busy to respond to our allegations, but it was not a matter for the Hospital anyway.

We escalated our complaint to the PHSO in March 2019, who responded that our complaint had not been officially recorded by the Hospital. Despite us having followed the Hospital's complaint procedure correctly, we were now obliged to go through their process again.

The result was that, nine months after their original conclusion, the Hospital failed to consider any new evidence and reached the same conclusion. The HCPS was permitted to pass judgement on their own behaviour, despite a subject access request revealing that their claim to have received none of our records from the PPC was yet another statement contradicted by the evidence.

For comparison, the entire civil court process, from filing my claim against the PPC to receiving the final judgement, took ten months. It would have taken four months if the PPC had engaged with the pre-action protocols correctly. The judge only required all the evidence from both sides two weeks before the hearing, and calculated that, in total, I had only lost eight working hours attending court.

Unfortunately, this judgement was nearly lost from the public record. On requesting the transcript, the court informed me that the recording equipment was broken, but had now been repaired after their investigation. When challenged, they discovered that they had searched the wrong room, with the alarming implication that broken recording equipment is only identified on an ad-hoc basis. HM Courts and Tribunals Service have still not acknowledged the concerns for open justice which I raised three years ago, perhaps safe in the knowledge that, again, I may only appeal to the PHSO.

Fortunately, I was eventually able to obtain a full transcript of the court judgement before the PHSO could consider our complaint about the Hospital in earnest. I am happy to provide a copy of this transcript to the PACAC, they should have any reason to doubt the extracts on the next page.

The judge agreed that the PPC did indeed send false evidence to their parking appeals service:

> ***39.*** *I do not intend going through each point made by Mr Walford, which are set out in 45 pages. What is clear, however, is that some of the documentation submitted to (the appeals service) by the defendant were not true copies of documents or letters. Mr Walford, in his response to (the appeals service), refers to "false, misleading and irrelevant information".*

The judge agreed that the PPC had included certain legal threats in their letters to myself, but deliberately omitted those threats in the sanitised copies they presented to their appeals service:

> ***46.*** *In the absence of any explanation, I can only find that this was deliberately done by the defendant. This may, perhaps, have been an attempt to present to (the appeals service) that the defendant had at all times sought to act as a responsible operator. Deliberate exclusion of such wording does not, however, sit well with such a position. It suggests to me that when dealing with an authority - here, (the appeals service), the face the defendant presents is misleadingly different from the face it presents to the driver or registered keeper of a vehicle.*

The judge agreed that the PPC did not understand the Hospital's own parking policy, and indeed, suggested that this was very much a matter which the Hospital themselves must also address:

> ***54.*** *If a staff member parks in an area not designated for use by staff, but then purchases a ticket, that staff member is lawfully entitled to park in that area. Indeed, that is clear from paragraph 5.6 of the hospital's own parking policy, to which I have already referred.*
>
> ***55.*** *If the representation made to (the appeals service) on this aspect is the guidance*

that the defendant provides to its staff who issue parking charge notices at the hospital, then the defendant needs to revise its guidance to staff. I suspect that the hospital may themselves also want to ensure that the defendant complies with its contractual obligations as between the two parties.

The judge noted that the PPC also failed to understand their own legal obligations:

67. *Furthermore, it is clear that the defendant does not understand its own legal position when asserting to (the appeals service) that Mr Walford was not allowed to park in a non-staff parking area even if he had purchased a valid ticket.*

68. *Drivers and/or registered keepers of vehicles issued with parking charge notices are entitled to expect that an operator firstly understands its own contract which it seeks to enforce, and secondly that in dealings with them, and in dealings with (the appeals service), that they will act in good faith.*

The above being a matter of public record, we now considered that we had done most of the hard work for the PHSO. We had also obtained, via a subject access request, full copies of the internal notes from both the complaint investigations by the Hospital, and the PHSO would later confirm that the Hospital themselves submitted no further evidence. We were not allowed to file a joint complaint review request, but I was assured that Mr [*name redacted*] evidence would also be considered.

We provided Caseworker #1 with the full timeline of events. We explained the Hospital's complaint procedure, and how we had followed that correctly from our very first letter. We deconstructed their paperwork to demonstrate how their own investigations had been nothing of the sort, then used the court judgement transcript to demonstrate how the actual evidence supported our complaint.

Two months later, Caseworker #1 at the PHSO questioned if the complaint form used in our initial approach was still accurate. I spent considerable time reformatting our most recent submission to the confines of the PHSO complaint form, which appeared to expect at most two sides of writing. The Hospital's subject access response alone had totalled over 300 pages.

Two months later, Caseworker #1 sent their interpretation of our complaint, which was extremely short and missing many important details. After some discussion, they agreed that all our evidence would be taken into account regardless.

Ten days later, Caseworker #1 reported that our case would not be taken forward for investigation. Their response referenced neither of the central issues, that the courts had found the PPC to be dishonest, and that the Hospital still took no responsibility. By this point, their CEO had received both a copy of the court judgement transcript from my case, and a letter of apology from the PPC in Mr [*name redacted*] case as a condition of his out-of-court settlement. We would later discover that the PPC had even been filmed misbehaving at the

Hospital, causing such public embarrassment that even the DVLA were compelled to temporarily suspend their ability to request personal data.

I was now obliged to ask Caseworker #1 to review their own decision before I could request an independent opinion. They stood by their decision, then in September 2020 I first heard from an Operations Manager, now Caseworker #2, who hoped to complete their review within two weeks.

In November 2020, Caseworker #2 wrote to apologise that their case review was now expected to be complete by the end of the month. What happened next is not entirely clear, because when we finally obtained the relevant internal notes - which took eight months, and a Decision Notice being issued by the ICO - the PHSO had absolutely no written record of what they had done.

During this gap in their records - from November 2020, when we last heard from Caseworker #2, until March 2021, when we first head from Caseworker #3 - persons unknown within the PHSO decided to reassign our complaint to mysterious collectives who signed their emails in generic terms, such as "The Review and Feedback Team" (RAFT), rather than providing real names.

We first heard from the anonymous Head of RAFT at the end of December 2020, who stated that, actually, Caseworker #2 had never started their work, so it had been put in a new review queue. They concluded that asking for any more information would merely delay my case.

One month later, the equally anonymous RAFT themselves wrote to say that my case remained in the queue, and again, that asking for any more information would merely delay its progress.

In March 2021, four months after my case review was snatched from a named Manager without explanation, RAFT wrote to say that they had decided to open a new case. They continued that, because this was now a new case, the PHSO would need to once again consider if it could be taken forward for investigation or not.

I immediately referred RAFT to the PHSO's own *"Service Model Policy and Guidance: Review and*
Feedback Guidance 9.0", which made it plain that my review request could only have reached RAFT if it had already been upheld by an Operational Manager. RAFT's immediate response was to remove this public document from the PHSO's policy page[4], where it remains listed as *"currently under review"* eighteen months later.

I next heard from Caseworker #3, who made it clear that my case really was now being treated as though it were my first contact with the PHSO. Their remit, handed down from persons unknown at RAFT, was merely to determine if NHS organisations were responsible for the actions of their car parking contractors. I argued that this was an extremely narrow

[4]https://www.ombudsman.org.uk/about-us/corporate-information/freedom-information-and-data-protection/our-publication-scheme/our-service-model

remit, and a trivial question for an organisation that should already know the legal responsibilities of the public bodies they regulate, but I also conceded that confirming the answer would be a small step forward.

In the meantime, on the 1st of April 2021 I received the first call of two calls from the independent private research company appointed by the PHSO to gather feedback on their KPIs. I apologised to the kindly operator for my comments, who said I was calmer than average, then volunteered that *"about 100%"* of the people they spoke to were firmly dissatisfied. This is anecdotal, but we encourage the PACAC to request such raw data in addition to the derived KPI percentages.

We also encourage the PACAC to ask the PHSO why, at least four years after their omission was first noted, they still do not publish the percentage of respondents who are satisfied with their ability to *"evaluate the information gathered and make an impartial decision on your complaint"*.

While Caseworker #3 spent six months answering their remit, I learned that neither Caseworker #1 nor RAFT nor anyone within the PHSO had viewed the court judgement transcript, and all previous decisions had been reached without determining if my allegations were justified or if the Hospital were responsible for the actions of their contractors. I raised this with RAFT, who did not respond.

In September 2021, Caseworker #3 concluded that, following internal legal advice, under the Healthcare Commissioner Act 1993 the PHSO could not investigate any complaint where a legal remedy was reasonably available or had been sought.

I replied that the PHSO's own *"Service Model Policy & Guidance"* specifies that this only applies to a *"complete remedy"*, and the fact that the courts had found the PPC to be dishonest meant little while the Hospital maintained that this was none of their concern. I asked the PHSO to explain precisely what legal action I was expected to take against the Hospital themselves.

Caseworker #3 passed my comments back to their (anonymous) legal team, then four months later, informed me that my case would be allocated to Caseworker #4, with yet another new number. We therefore encourage the PACAC to ask how long in total complainants are waiting in for their cases to be resolved, because it appears that assigning new numbers is just a ruse to reset the clock.

Eight months later, Caseworker #4 introduced themselves, and their sole remit is to determine if the Hospital still deny responsibility for the actions of their contractor. We told them that eight months ago, but apparently we still cannot be trusted, so our Case 4 of 4 remains open.

My MP first wrote to the PHSO on my behalf in 2020, then again in 2021, and most recently in 2022. It is perversely reassuring that, with all of their letters remaining unanswered, my MP has been treated with similar disregard.

Conclusion

We consider that, if our experience is typical, then the PHSO are simply unfit to gather and fairly evaluate the evidence behind any complaint in a timely manner. We encourage the PACAC to question which of their KPIs really matter, and why those are so consistently low or not even published.

We consider that the PHSO staff management and training is dire, that their service models are withdrawn from public view when they become an inconvenience, and that it should not be for members of the general public to correct them on their own legal responsibilities.

We consider that the PHSO provide terrible value for money. The civil courts required fees of only £140 to hear my claim, and the PHSO have demonstrated a fraction of their ability to understand and apply the law. Based on an average £30 million annual budget typically funding 7,000 cases like ours, each case number costs the taxpayer £4,300. We have been allocated four numbers, with remarkably little to show show for that £17,200.

We consider that the PHSO have a negative impact on the public bodies which they regulate, because those bodies can dismiss all legitimate complaints, safe in the knowledge that the PHSO is even more skilled at stopping them dead. Public bodies only need fear those with the resources to challenge them directly in the criminal courts, and if the PHSO is not willing to help those less fortunate, then they only damage faith in public services and the parliament which they represent.

November 2022