

## Written evidence from PHSOtheFACTS<sup>1</sup> (PHS 10)

### Public Administration and Constitutional Affairs Committee Parliamentary and Health Service Ombudsman Scrutiny 2019-20 inquiry

1. **Public confidence:** PHSOtheFACTS have submitted evidence to the PACAC scrutiny of the Parliamentary and Health Service Ombudsman every year since 2013, in the hope that this body would be held to account for its poor service to the public. In 2017 Sir Bernard Jenkin, the previous chair of PACAC, informed us that we would be pleased with the new Ombudsman, namely Rob Behrens and indicated that the ‘dark days’ of PHSO failure would be a thing of the past. Unfortunately, we are now in even darker days than under the leadership of Dame Julie Mellor. Our campaign for reform of the Ombudsman has succeeded in raising public awareness of the issues, particularly since the release of our book, **What’s the point of the Ombudsman?** which is receiving 5-star reviews on Amazon. Declining public confidence is an issue the PACAC committee should address.
2. **Value for money:** In March 2020 David Hockey published an academic paper entitled ‘The Ombudsman Complaint System; a Lack of Transparency and Impartiality’. <https://link.springer.com/article/10.1007/s11115-020-00469-2>

Abstract:

*Recent investigative media reports into suicides, racism and sexual offences are occurring within the University estate amidst complaints that the Universities are not doing enough or even accepting the complaints raised by victims. The purpose of this article is to explore the role of the Independent Adjudicator for Higher Education in overseeing this state-of-affairs and the pattern of issues that are like those of the now-discredited Independent Police Complaints Commission.*

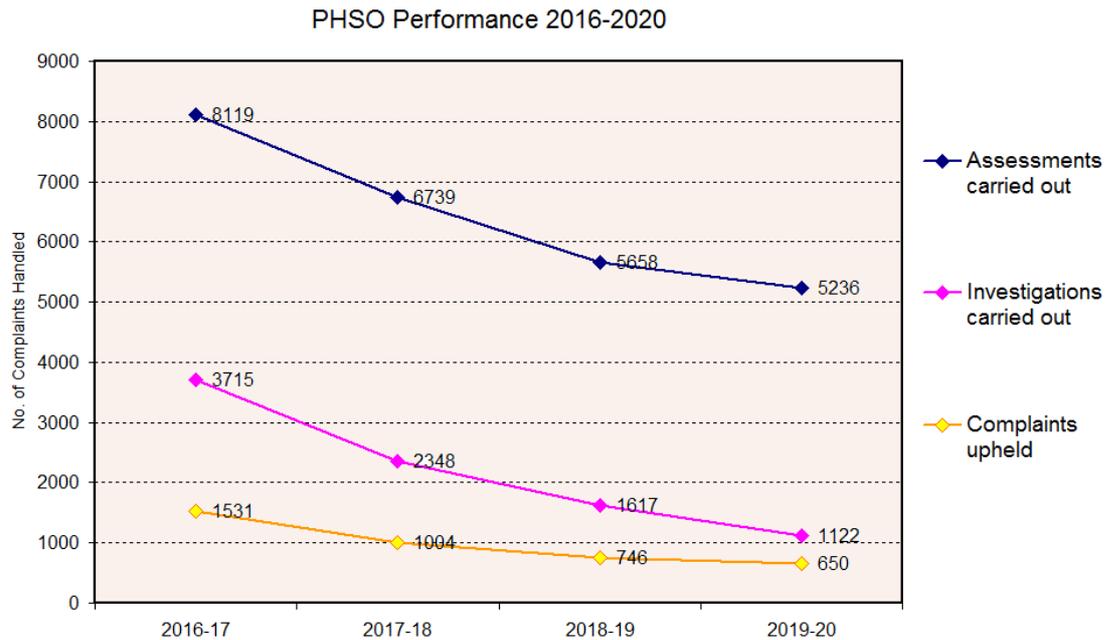
In his examination of the effectiveness of the Independent Adjudicator for Higher Education, Hockey revealed that whilst in this role Rob Behrens found between 4 – 6% of complaints to be ‘justified’. A figure which is statistically significant in favour of the provider.

The chart below demonstrates that since the arrival of Rob Behrens at PHSO all services to the public have declined, including the uphold rate. More people than ever are submitting ‘unjustified’ complaints under Rob Behrens watch.

It can only be assumed that PACAC knew of Mr Behrens OIA performance on appointment. He has undoubtedly reduced access to justice in his tenure at PHSO. In 2019/20 Mr Behrens delivered a record low uphold rate of just 2.1% of all complaints handled and a mere 0.3% received a full uphold. Mr Behrens has excelled in closing down more complaints, without assessment or investigation, than his predecessor.

---

<sup>1</sup> Submitted by Della Reynolds, PHSOtheFACTS



In what respect does the PACAC Committee feel it is ‘value for money’ to use public funds on a body which fails to deliver remedy and justice for approximately 98% of the people who turn to the Ombudsman for much-needed assistance?

3. **Impact on other agencies:** In what respect does the PACAC committee feel the PHSO has a tangible impact on other agencies when 98% of complaints are rejected with no uphold?
4. **Lack of transparency:** In August 2019 an FOI request made to PHSO to release the data regarding Parliamentary Complaints for 2018/19 was refused on the basis that the data would be released by the end of the year. The data was not released by the end of the year, as is standard practice. It was not released until early March 2020. Once released the data revealed that just 0.6% of parliamentary complaints were upheld to some degree. 99.4% of complaints were therefore considered ‘unjustified’. Is the committee comfortable that this data presents an accurate picture?

Despite the long delay, the data was not released in a published report as in previous years, but as an excel data chart. This chart contained searchable information which breached data protection law for hundreds, if not thousands of individuals. Once reported to PACAC, the Ombudsman withdrew the data chart and referred itself to ICO. There is currently no report on Parliamentary Complaints for 2018/19 available on the PHSO website. ICO have accepted our complaint regarding this lack of transparency consequently incurring further public spending for an organisation which is already overstretched as it has taken them over 6 months to allocate a caseworker to investigate. Can the committee ensure that a full parliamentary report is placed on the PHSO website for both 2018/19 and 2019/20?

5. Although the PACAC committee is recently formed under the chairmanship of **William Wragg MP**, no doubt there is a recognition that in previous years the evidence supplied to the committee has been severely critical of this organisation. You may also be aware that such concerns have been aired in the public domain in a series of recent articles linked here for your information:

22<sup>nd</sup> July <https://thecritic.co.uk/democracys-accountability-problem/>

8<sup>th</sup> Aug <https://thecritic.co.uk/healthcare-needs-an-ombudsman/>

1<sup>st</sup> Sept <https://unherd.com/2020/09/lets-be-honest-the-nhs-is-awful/>

7<sup>th</sup> Sept <https://thecritic.co.uk/why-is-the-government-letting-another-quango-mislead-parliament/>

6. It is clear that PHSO continues to fail the public and there is increased awareness of this failure. Much as we are disappointed that Mr Behrens did not live up to his promise, this is not about one man. The systems which govern organisations such as PHSO (and the OIA) create rules which allow for excessive discretion to cherry-pick evidence with little transparency or accountability. The Ombudsman can control the narrative by choosing what to publish and what not to publish. The data are skewed in their favour through omission, obfuscation and interchangeable terminology without reprimand from the National Audit Office or any other governmental body.

There is an inherent danger in facilitating unaccountable bodies within a democracy. A loss of public confidence leads to the disenfranchisement of the populace which, with repetition, reaches a tipping point between democracy and autocracy. In short, it is the road to dictatorship and who knows how far we have already travelled. Our democracy can only be protected if those with the authority to intervene, courageously act to protect citizens from the abuse of power. Over to you PACAC Committee. We will be watching and waiting.

*October 2020*