

Written evidence from David Willingham (PHO 14)

Public Administration and Constitutional Affairs Committee Parliamentary and Health Service Ombudsman Scrutiny 2020-21 inquiry

I am submitting evidence in the capacity of an individual who accessed the PHSO service during the review period.

The evidence I wish to submit relates to my experience of using the PHSO service. I appreciate that it might be seen as inappropriate to go into the details of my case so I will limit references to this to the minimum necessary to show evidence of the negative impact that PHSO working practices and conduct had on my response to their customer satisfaction survey and thus on assessment of their performance against some of the service's key performance indicators (KPI's). Everything that I say is supported by written evidence in the form of email correspondence between myself and the PHSO and between myself and the organisation I complained about to the PHSO. This evidence is available to the Committee if required.

I will start by covering some information regarding how my case was handled before moving on to mention further action taken by my MP and to make some observations regarding how complaints about the PHSO are dealt with. I will then cover the relevance of my experience to various KPI's and provide some further information about the impact on complainants of the way the PHSO operates in a wider context.

The PHSO assessment and decision regarding my case contained numerous, what I described at the time as, factual errors, omissions and misunderstandings (subsequently referred to collectively as 'errors') which completely undermined both the assessment and decision.

To give one example, the PHSO description of the issue I had raised with the organisation I had complained about was plainly wrong. The correct description was evidenced in writing in several earlier emails from me to the organisation concerned and in my submission to the PHSO.

Another example was the PHSO's assertion that the organisation in question had addressed all the complaints I had made to them. Again, this was clearly untrue and unsubstantiated. When I asked the PHSO to direct me to the evidence supporting their claim they repeatedly refused to do so, clearly because such evidence was non-existent.

I could provide other examples of similarly damning 'mistakes' by the PHSO. The PHSO completely ignored indisputable written evidence and their assessment and decision were based on false and contrived grounds resulting in both the assessment and decision being without legitimate foundation and irrelevant to the complaint I submitted. I initially thought that these might be genuine errors by the PHSO but it subsequently became apparent that the PHSO was deliberately employing tactics of misrepresentation, manipulation and deceit in making and defending its assessment and decision.

The first indication of this arose when I wrote on 30th November 2020 to the caseworker who had issued the assessment and decision appealing against the these. I provided detailed information and evidence describing the errors in the assessment and decision and their

impact in completely undermining both, rendering them unsound and perverse. The caseworker replied in writing refusing to change the assessment and decision saying that none of the information I had provided added anything new as all of this was known to PHSO in making the assessment and decision. She did not dispute any of that information and evidence or tell me that any of it was considered irrelevant but made no attempt to explain or rectify the errors. Whilst I was pleased to receive such a clear and unambiguous admission that the errors and their impact were known about by the PHSO, I was dismayed that the PHSO had still gone ahead and published an assessment and decision in full knowledge that both were fundamentally and fatally flawed. Whilst the caseworker told me that information had also been provided to the PHSO by the organisation that I had complained about, she did not disclose any of this information to me or tell me how the PHSO considered it to impact on my case. I was thus unaware of and unable to challenge anything that the organisation in question had said regarding my case. The caseworker's response was also a clear attempt to block and bring an end to my appeal at that point as she failed to inform me of the need for me to complete and submit a formal 'request for review' form for my appeal to progress; it was only because I wrote to her again that she was forced to direct me to this requirement.

I submitted a 'request for review' form to the PHSO by email on 20th December 2020. In this I referred again to all their errors and the impact of these as described in my email of 30th November 2020. It took over four months for the PHSO to make its formal response to my review request on 8th April 2021. In this the PHSO set out an incomplete list of the errors and supporting factual information I had raised in my email of 30th November, 2020, unfairly changed the terminology I had used and told me that the caseworker had already addressed all these issues in detail. This was blatantly untrue and unsubstantiated. The caseworker had told me in her email of 8th December 2020 only that the information I had provided detailing these errors had already been considered. She had at no point addressed or rectified any of the errors or issues or the impact they had in invalidating the PHSO assessment and decision. In their response the PHSO even insisted that the caseworker had understood the issue I had raised with the organisation I had complained about even though her written description of this issue was shown to be incorrect to the point where PHSO reliance on this completely undermined their assessment and decision. Wrongly claiming that the caseworker understood the issue I had raised despite all written evidence to the contrary, meant that, inexplicably and without justification, the PHSO did not believe my repeated descriptions of the issue to both the organisation in question and themselves. They were thus ludicrously implying that I did not understand what the issue was that I had raised but that the caseworker did.

On 22nd April 2021 I submitted five formal and fundamental complaints to the PHSO regarding the way they had handled my case along with supporting evidence in each case. None of the issues related to my complaints had previously been addressed by the PHSO. I also requested that the PHSO let me know if the organisation that I had complained about had provided any information to the PHSO which differed to any of that provided by myself and to send copies of this to me. I stated that I believed I had the right to see such information.

In their reply, the PHSO completely ignored my complaints and my information request described above, told me they had nothing more to say and that they would not respond to any further correspondence from me. They also made a thinly veiled allegation that correspondence from me was wasting their time. I could only conclude they had replied in such an obstructive way because they were not willing to admit that my complaints were justified, that their assessment and decision were based on untrue information, perhaps provided by the organisation concerned, which did not stand up to scrutiny against the hard,

written and factual evidence I had provided and that their priority in considering the specifics of my case was to protect an industry regulator and a fellow ombudsman from legitimate criticism.

My MP subsequently wrote to the PHSO requesting a response to the issues I had raised but the PHSO also refused to provide this to her, only referring to their previous correspondence with me. My MP subsequently raised the matters in question with the appropriate government minister and went on to write to the Parliamentary Public Administration and Constitutional Affairs Select Committee. I am currently waiting to hear the outcome of that correspondence.

It is ironic that the PHSO publishes guidance to other organisations on how to handle complaints properly but does not comply with its own guidance when dealing with complaints about the PHSO, which in my case were dismissed without investigation or response to either my MP or myself. I can understand the PHSO's reluctance to give individuals a 'second bite of the cherry' by submitting complaints about the PHSO's findings but it must surely be incumbent on the PHSO to accept and organise independent consideration of legitimate and well-evidenced complaints regarding their conduct in the handling of an individual case. As an alternative, and to overcome doubt about the PHSO's reliability to do this in an impartial and objective manner, there is a case for a formal independent appeal mechanism to be established to consider such cases. It could be expected that the availability of such recourse would have a positive impact on PHSO 'scores' against relevant KPI's.

In this context it is also relevant to note that the PHSO's assessments and decisions in individual cases are currently not subject to any external review or audit so complainants have nowhere to go to seek independent review. The PHSO is no doubt aware of, and reliant on, the fact that recourse to the judicial review process in complaints against it is unlikely to be a viable option for most complainants. Without going into details here, the way the judicial review process works also makes it extremely unlikely that any judicial review cases against the PHSO will be successful; so far as I have been able to ascertain, there has only ever been one successful judicial review case brought by an individual in the entire history of the PHSO. Whilst the PHSO advises individuals that this avenue is open to them, they therefore do so safe in the knowledge that their misdeeds will not be undone or punished by the legal process.

Regarding the PHSO's refusal of my request to let me know about and provide me with copies of information they had received from the organisation I had complained about and the impact of their conduct in this respect on a particular KPI, one of the recommendations of the Parliamentary Public Administration and Constitutional Affairs Select Committee in its scrutiny report on the PHSO for 2019/20, and particularly the PHSO's response to this, are relevant and important. The recommendation stated:-

'The Committee appreciates that there is a risk that complainants could be overwhelmed with information if all evidence the PHSO has collected is shared with them, but it remains the case that complainants need to be assured that all the evidence they have provided has been properly logged. We recommend as an initial step that the PHSO should at a minimum produce a schedule of evidence that they have collected and that this schedule is shared both with complainants and with the organisations being complained about. This would give both parties assurance at least that all the evidence they have provided has been properly logged.'

This may help improve scores against service charter commitment 8 on gathering all the necessary information.'

(Service charter commitment 8 states that:

'We will gather all the information we need, including from you and the organisation you have complained about, before we make our decision'

According to the PHSO's annual report for 2019/20 the independently commissioned customer satisfaction survey of users of the service recorded that only 51% of service users felt that the PHSO had done so.)

In written response to the Committee's recommendation, the PHSO stated on 25th March 2021:-

'PHSO recognises the importance of being transparent about the material evidence (the evidence which we have taken into consideration in making a decision on a complaint). We set out in each final investigation decision report how material evidence has supported the final decision on each case we have investigated. This evidence is available in full on request. Some evidence gathered will be material evidence that is relevant to PHSO's consideration of a case, but some evidence may not be material to the decision. We consider scheduling non-material evidence would be disproportionate.

We acknowledge that producing and sharing a schedule of the material evidence for investigations could help strengthen complainants' and organisations' understanding of how evidence is used in casework. We already produce a full schedule of material evidence on request in line with our service policy and we believe doing so is a proportionate means of meeting this need.'

Despite these commitments and assurances to the parliamentary committee, the PHSO refused my request that they let me know of any information provided to them by the organisation I had complained about regarding my case and that such information be released to me. Instead, they told me that they had nothing more to say and that they would not engage in further correspondence with me. Whilst the PHSO focussed in part of its response to the Committee on the sharing of evidence related to final investigation decisions, the Committee did not distinguish between assessment decisions and final investigation decisions and it is unreasonable and deliberately obstructive for the PHSO to deny the release of evidence in assessment decisions such as that issued in my case.

Whilst I consider that I had a right to see this information per se, I believe that a requirement to release this information to me may also arise under GDPR and/or FoI regulations.

It is also relevant to repeat, in the context of this KPI, that the PHSO ignored material evidence from me as detailed in my unanswered complaints and previous correspondence to them.

It is further relevant to note the relatively low customer satisfaction 'scores' in 2019/20 against some other KPI's reflected in PHSO charter commitments and how these relate to my experience.

For example, a score of 70% was recorded under the commitment that:

'We will share facts with you and discuss what we are seeing.'

The PHSO clearly refused to share the factual information I requested with me and to tell me how this was assessed by them.

Another example is a score of just 47% (down from 53% the previous year) under the commitment that:

'We will explain our decision and recommendations and how we reached them'.

The PHSO completely failed to provide true and logical explanations for its assessment and decision in my case and failed to provide or refer me to any true information or evidence that supported and substantiated their assessment and decision. On the contrary, they relied on fabricated information to support their assessment and told me further untruths in responding to my request for a review. All my complaints are supported by written evidence. In marked contrast, the PHSO failed to produce or refer to any evidence, written or otherwise, in support of its original assessment and decision, in its review decision or in its failure to act on my complaints.

Online reviews of the service provided by the PHSO reveal that allegations of improper conduct by the PHSO such as I have experienced are not uncommon. This was reinforced to me further when I was contacted by an independent consumer research company commissioned by the PHSO for feedback on my experience of using the PHSO service. Although it was true, when I hesitated to say that I had been lied to by the PHSO, the interviewer told me not to worry about saying so, that he had conducted lots of these interviews and that he was used to hearing that sort of comment about the PHSO. I acknowledge that some complainants may just be upset not to get the outcome they wanted but there does seem to be a body of opinion and information supporting the view that the PHSO cannot be trusted to be independent, objective, unbiased and thorough in its consideration of complaints regarding both other organisations and itself, a situation that is reflected in various low KPI 'scores'.

In addition to the evidence I have provided above, information on the website <https://phsothetruestory.com/home/> provides a useful further insight which has a bearing on customer satisfaction ratings against PHSO performance indicators. I acknowledge that this is a pressure group seeking to achieve reform of the PHSO service and must stress that I have no connection or involvement with that group. However, the website provides some useful information and perspectives under various headings. For example, the description of what to expect from the PHSO when asking for a review of a decision is remarkably similar to what I endured. This made me realise that my experience was not an exception to the rule. Another piece on the website arguing that the PHSO service is corrupt by design appears to be well-researched and presented.

In summary, my evidence shows how customer satisfaction ratings feeding into assessment of PHSO performance against established KPI's can be adversely affected by working practices and conduct within the PHSO service in handling individual cases. Whilst most of the evidence I have provided relates to an individual case, it is apparent that other complainants have suffered similar treatment to a greater or lesser degree resulting in poor overall ratings of PHSO performance against several KPI's as reported to the Public Administration and Constitutional Affairs Select Committee. I trust that the Committee will accept and give due consideration to the evidence I have provided.

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