

## **Gasston Aimee**

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**From:** Yore Michelle  
**Sent:** 17 February 2014 11:17  
**To:** Sykes Sally  
**Subject:** Casework News 49

Hi Sally

Thanks for agreeing to write something about this month's phsothefacts meeting.

Just a reminder that the Casework News deadline is tomorrow. In practical terms I'm off on Wednesday so as long as the email is with me in time for the sub edit on Thursday morning that would be great.

Thanks again.

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## PHSOthefacts:

### Rationale for the lack of a definition of 'maladministration'

1. Back in 1966 when the Bill was being debated, Parliament was at pains to ensure the new Ombudsman was limited to dealing with administration and did not usurp the function of Parliament to criticise policy or the law, or detract from ministers' responsibility for policy, or interfere in legislative or judicial or quasi-judicial functions.
2. The drafters of the Bill acknowledged that as neither "policy" nor "administration" has a precise meaning (and can mean different things at different times), no practical way of defining either term had been found. They had looked at the New Zealand Act (I think some of the campaigners have referred to this as being the best for defining mal-n) but they felt it "provides no solution to the problem" as it included the possibility of the NZ Ombudsman acting where he thought "a decision...was wrong" which enabled him to enter the field of policy. They said that there was nothing in the Bill to prevent the word "maladministration" from being read as covering any fault of administration.
3. An earlier Ombudsman Sir William Reid said: "To define maladministration is to limit it. Such limitation could work to the disadvantage of individual complainants with justified grievances that did not fit within a given definition."
4. There have been occasional attempts at giving "examples" of maladministration, however. In the debates on the Bill the Government spokesman Richard Crossman said that because of the difficulties, they had left maladministration and injustice undefined as their meaning would be "filled out by the practical processes of casework" but gave a list of things which could have been included in the term, had they chosen to define it (known as "The Crossman Catalogue"): "bias, neglect, inattention, delay. Incompetence, inaptitude, perversity, turpitude, arbitrariness and so on".
5. These examples were later added to by Sir William Reid: rudeness, unwillingness to treat the complainant as a person with rights, refusal to answer reasonable questions, neglecting to inform a complainant on request of his or her rights or entitlements, knowingly giving advice which was misleading or inadequate, ignoring valid advice or overruling considerations which would produce an uncomfortable result for the over-ruler, offering no redress or manifestly disproportionate redress, showing bias because of colour, sex or any other grounds ... and there were more.
6. Now, we tend to measure actions of bodies in remit against our Principles of Good Administration which are flexible enough to cover what we do but are not confining or limiting.

Anne Harding  
05 February 2014

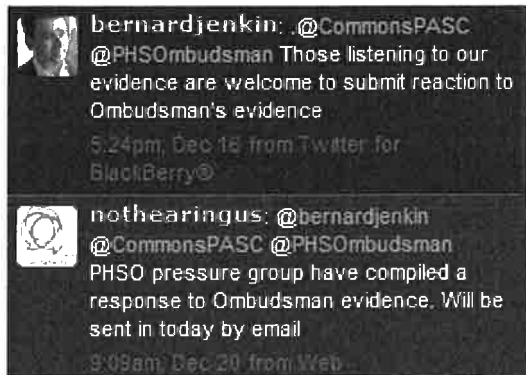


## Gasston Aimee

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**From:** Holmes Matt  
**Sent:** 20 December 2013 10:26  
**To:** Reay Diane; Browne Mike; Nicholls Anne; Milner Rebecca; Moulds Alison; Mende Philipp; Sykes Sally; Davies Rob; Wampamba Oscar; Roberts Martin  
**Subject:** PHSO pressure group response to PASC evidence  
**Importance:** High

### PROTECT



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**To:** Julie Mellor

**From:** Philipp Mende

**Date:** 29 January 2014

**Subject:** Pre-meet on 4 February 2014, to prepare meeting with *PHSOthefacts* on 6 February

**Action:** For discussion

LT member cleared with: Sally Sykes

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### **Purpose of the meeting**

- To listen to the concerns *PHSOthefacts* have about our work.
- To discuss the relationship that we would like to develop with *PHSOthefacts* in the future.

### **Objectives**

- To demonstrate that we do listen to feedback from our customers, take their concerns seriously and have made major changes to the way we work in response to customer feedback.
- To develop a relationship with *PHSOthefacts* that is taken forward through channels other than FOI.

### **Possible points to make at the meeting**

- We have sympathy with those whose cases we may have investigated had they been brought to us under our new arrangements.
- However, we can't reopen old cases unless substantive new information comes to light - a change of policy does not/cannot mean going back to look again at everyone who was dealt with under the old policy.
- This is perfectly fair, provided people were dealt with properly under the old policy - people had the opportunity to ask for a review/challenge us legally if they were dissatisfied at the time. We give our customers opportunity throughout the process to comment on drafts and ask for reviews of our decisions.
- It would not be fair on bodies in jurisdiction and their staff to reopen old cases they assume were closed - they have a reasonable expectation that the matter is at an end (and may even have a legal legitimate expectation).
- With more than 26,000 cases per year we need a Delegation Scheme - It is not reasonable to expect the Ombudsman to personally handle every complaint/letter/email. The Delegation Scheme delegates responsibility for actions to identified staff members - they should deal with correspondence etc. in their

area even if it is addressed to the Ombudsman. However, staff will always feed issues/concerns raised by complainants back into the system.

- We always listen to feedback on our service and a number of dissatisfied customers took part in a customer journey research exercise in October - this was very helpful and insightful.
- Feedback from our customers, including those who went through our review process, informed our new strategy and was instrumental in our decision to investigate many more complaints.

## Background

### Meeting on 6 February

- You will be meeting with *PHSOthefacts* on 6 February.
- The meeting will take place in Room 15.6. Sally Sykes will be at the meeting, as will be a member of Executive Office to take notes.
- Sally has previously spoken to [name removed] on the phone to arrange the meeting.

### Recent letter to MPs

- *PHSOthefacts* wrote to all MPs on 16 January to introduce themselves as a pressure group, highlighting their key objectives:
  - *"To improve [PHSO's] service for all those who follow, so that each receives a fair and unbiased investigation, remedy and closure.*
  - *To compel the Ombudsman to thoroughly investigate historic cases where there has been no satisfactory resolution."*
- The letter also sets out the group's priorities for reform of PHSO:
  - **All cases** presented to the Ombudsman should be **investigated** - there should be no threshold of evidence required from the complainant as it is the Ombudsman's role to secure the evidence from all parties.
  - All **reviews** should be carried out by **external assessors** and be personally monitored by the Ombudsman herself.
  - The **discretionary clause** in the 1967 Act should be replaced with a clear set of guidelines which can be used to hold the Ombudsman to account, including a **definition of 'maladministration'** [*this refers to section 5 of the PCA 1967 which sets out which matters we can investigate*].
  - The Ombudsman should be **accountable to the public through elected representatives such as PASC** - this body should have the power to monitor finance, apply sanctions and enforce recommendations.
  - All users of the Ombudsman service should be given the opportunity to complete a **customer satisfaction survey** and results from this survey should be published by the Ombudsman and by Parliament.
- The pre-meet will be an opportunity to discuss our response to the issues raised in the letter.



## PROTECT

**To:** Julie Mellor  
**From:** Philipp Mende  
**Date:** 5 February 2014  
**Subject:** Meeting with *PHSOthefacts* on 6 February, Room 15.6  
**Action:** For information  
LT member cleared with: Sally Sykes

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### Purpose of the meeting

- To listen to the concerns *PHSOthefacts* have about our work.
- To **demonstrate** that we take feedback from our customers (including from our critics) seriously and that we have made **major changes** to the way we work in response to that feedback.

### Objectives

- To demonstrate that we **share** some of their **analysis** of the problems and to identify some **common understanding** of the changes we have made in response to feedback and criticism from our customers.

### Why & how we have changed

- We understand their frustration and share their analysis which mirrors what our customers, stakeholders, Parliament and our own staff have told us - we need to investigate more complaints and provide more customers with a final adjudication on their complaint.
- This was also the key recommendation from a review we commissioned from Baroness Fritchie of the way we deal with complaints about potentially avoidable deaths in the NHS.

### *More Investigations for More People*

- We have listened to all this feedback and have fundamentally changed the way we deal with complaints:
  - Historically we took a **merit approach**, setting a very high hurdle for investigations: we did not investigate, unless the evidence showed that we were likely to uphold the complaint.
  - We now take an **inclusive approach**: we investigate all complaints where there is an indication of injustice/maladministration/service failure unless there are specific reasons not to.
- This new approach has made a real difference to our customers:

	Apr-Dec 2012	Apr-Dec 2013
Assessments	5,426	5,099
Investigations	352 (7%)	2,688 (53%)
Completed investigations	249	1,046

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- Importantly, our new approach means that all customers whose complaints we are investigating have the opportunity to provide **input and comment on our draft reports** before our decisions are finalised.

### Reviews

- Not accepting complaints for investigation was the main reason why customers were unhappy with our service under our old process: in 2012/13 we reviewed 946 decisions not to investigate a complaint (upheld: 98). In contrast, we only reviewed 33 decisions on the outcome of our investigations (upheld: 5).
- Because under our new approach so many more customers have the opportunity to provide input and comment early on, we have updated our review process. We will now only review our decisions on the grounds of:
  - New evidence that was not available previously
  - Factual inaccuracies
  - Plausible reasons that our decisions may be flawed
- We do **not** agree that all reviews should be done by external assessors. We already do more than any other Ombudsman service - we are the only Ombudsman service with an internal review team and, unlike most other Ombudsmen, we send about 10-15% of our review cases to **external reviewers**. Interestingly there seems little difference in the ratio of upheld complaints whether the reviewer is internal or external.

### *PHSO* the facts' demands for reform of PHSO

#### Reopening cases

- While we have sympathy with those whose cases we may have investigated had they been brought to us under our new approach, we **can't reopen old cases** unless substantive new information comes to light.
- Our change of policy does not/cannot mean going back to look again at everyone who we dealt with under our old policy. There needs to be a cut-off point - we are applying our new approach to complaints that we have received since 1 April 2013.
- This is fair, provided people were dealt with properly under the old policy - people had the opportunity to ask for a review/challenge us legally if they were dissatisfied at the time. We give our customers opportunity throughout the process to comment on drafts and ask for reviews of our decisions.
- It would be unfair on bodies in jurisdiction and their staff to reopen old cases they assume were closed - they have a reasonable expectation that the matter is at an end (and may even have a legal legitimate expectation).

#### Discretion & defining maladministration

- It is important that we have **discretion**. This includes being able to decide whether the scale of injustice suffered by a complainant means that it would be proportionate for us to investigate. Our **resources**, provided by the taxpayer, are **limited** and we have to be able to raise the threshold at which we accept complaints for investigation, for example, should we receive a much larger number of complaints in the future.

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- We do **not** agree that **maladministration** should be **defined** - this would limit its scope and would fetter our discretion, potentially working to the disadvantage of individual complainants whose justified grievances may not fit within a given definition.
- The concepts of maladministration and injustice were **deliberately left undefined** in our legislation - with the intention that their meaning would be filled out by the practical examples of our casework over time.
- We use our **Principles of Good Administration** to assess an organisation's actions - our Principles are flexible and do not confine or limit our discretion.

### Our independence

- Parliament has given us our current powers and has decided that we should be independent of both Government and Parliament in our casework decisions.
- This independence is fundamental to our ability to make **impartial decisions** - it means that politicians are unable to influence or direct our decisions.

### Customer satisfaction

- We value feedback on our service - feedback from our customers, including those who complained about us, informed our new strategy and was instrumental in our decision to investigate many more complaints.
- In all Ombudsman services there is a marked difference in customer satisfaction depending on whether someone feels that they have 'won' or 'lost' their case: satisfaction where we uphold an investigation is 98%, compared to 57% when we do not uphold the complaint. This is higher than at other Ombudsmen (FOS: 90% and 48%; LEO: 97% and 42% respectively) and suggests that a majority of our customers recognise the quality of our service even when we do not uphold their complaint.
- We understand that customers need a range of methods by which they can provide feedback - improving the way we collect customer feedback and publish the results will be a key area of work for us in the coming year.
- We would **welcome your thoughts** on how to improve our data and the way we present our findings as we take this work forward.

### 'Worthwhile outcome'

- We **no longer use** the term '**worthwhile outcome**'. However, it was used under our old approach in the context of securing a 'worthwhile outcome' for a complainant according to the circumstances of each individual case.

