

Draft Minutes of the Expert Advisory Panel meeting held on 26 November 2019 via VC between Citygate, Manchester and Millbank Tower, London

Members present:

Rob Behrens - Ombudsman (Chair)

Suzy Ashworth

Nick Coleman

Bill Kirkup

James Titcombe

In attendance:

Amanda Campbell - Chief Executive Officer

Maria Mansfeld - Interim Chief of Staff

██████████ - Governance Officer

(Minutes)

1. Welcome and Introductions

- 1.1 Rob Behrens welcomed members to the first meeting of the Expert Advisory Panel (EAP), which he formed and Chairs in his role as the Parliamentary and Health Service Ombudsman.
- 1.2 Members noted that Suzy Ashworth was not yet present at the meeting due to travel disruption and agreed to the Chair's proposal to continue the meeting via telephone link to Suzy until she was able to physically join.
- 1.3 *Suzy Ashworth joined the meeting by telephone.*
- 1.4 EAP members introduced themselves and their knowledge and experience relevant to EAP's work.
- 1.5 Meeting attendees introduced themselves and their roles supporting EAP's work.
- 1.6 Rob Behrens introduced himself and his role leading EAP's work.

2. Context of Panel creation

- 2.1 Rob Behrens provided context regarding the journey of significant transformation that PHSO has undertaken since both he and Amanda Campbell joined in 2017. He explained that the organisation is almost in the third and final year of the first strategic plan (2018 to 21) produced under their leadership, and explained his priorities for the next strategy as below:
- 6.1.1 Establishing professionalism of process e.g. with a programme of accreditation for Caseworkers which is currently being undertaken by Senior Caseworkers;
 - 6.1.2 Becoming 'absolutely transparent' e.g. by moving towards publishing all investigations online as soon as possible;
 - 6.1.3 Developing a collaborative approach with bodies in jurisdiction e.g. completing development of the new Complaints Standards Framework and using this to provide training and support to complaints teams within NHS and Parliamentary organisations.
- 2.2 Amanda Campbell encouraged members to be forthright with their questioning and challenge and explained that this approach is reflective of a culture of continuous improvement that is being developed at every level across the organisation.
- 2.3 Bill Kirkup queried the scope of challenge that EAP is able to provide. Rob Behrens clarified that he would have 'final say' on issues that EAP provides challenge on due to the Ombudsman's legal status as Corporation Sole.
- 2.4 All members expressed appreciation of their recent appointment to EAP and willingness to provide the confident challenge that this role requires.

3. Terms of Reference

- 3.1 Maria Mansfeld introduced the draft Terms of Reference for EAP and asked members to consider and agree them.
- 3.2 Rob Behrens explained that he wanted members to have an opportunity to discuss and agree EAP's Terms of Reference before they were published on the PHSO website with additional input from the Communications team to make sure the aims and purpose of EAP are clearly conveyed.
- 3.3 EAP members **agreed** the Terms of Reference.
- 3.4 James Titcombe requested key messaging for members regarding EAP's role and function, in order to assist in responding to queries they receive from members of the public, and to clarify that EAP is not a route through which to complain about PHSO.
- 3.5 Rob Behrens and Amanda Campbell agreed with this suggestion and encouraged members to approach either of them for additional support if required.

- 3.6 Rob Behrens emphasised the 'light touch' nature of the panel and the intention not to meet often. He also intends for members to have the opportunity to meet with the PHSO Board.
- 3.7 Bill Kirkup asked about a secure means to communicate amongst members in between the formal panel meetings. Amanda Campbell clarified that members will have secure PHSO e-mail addresses.
- 3.8 Maria Mansfeld added that she would follow the meeting with a link to a Data Protection questionnaire which would help the Information Assurance Team to make appropriate arrangements to support secure communications between members and PHSO.
- 3.9 Rob Behrens asked members to be conscious of General Data Protection Regulations.
- 3.10 James Titcombe supported this suggestion and explained some of the issues he experienced when making data access requests while pursuing complaints relating to his son's death. He asked members to be mindful of all their communications in their roles as panel members.
- 3.11 **Action:** Communications Team to develop key messaging on the aims and purpose of EAP to share with members in January 2020.
- 3.12 **Action:** All members to complete online Data Protection survey by end of December 2019.
- 3.13 **Action:** Secretariat to schedule EAP introductions at a future meeting of the PHSO Board.

4. Charging Protocol

- 4.1 Maria Mansfeld introduced the draft Charging Protocol, highlighting that members should e-mail their timesheets to the HR Team by the 5th of each month for same-month payment, and copy her into this communication so that she can retain oversight.
- 4.2 All members **agreed** the Charging Protocol.
- 4.3 James Titcombe requested for members to be sent an electronic template time sheet to use for their panel work. All agreed.
- 4.4 Nick Coleman explained that, as he works full time for an NHS Trust, he would rather that the Trust bill PHSO for the work he completes as an EAP member, and that he intends to submit only expenses to PHSO for payment to him.
- 4.5 Maria Mansfeld encouraged members to ask the panel secretariat to book travel and accommodation as required for panel work in order to mitigate expenses administration.

- 4.6 Rob Behrens asked whether members all agreed to meeting in Manchester for formal panel meetings. All **agreed**.
- 4.7 **Action:** Secretariat to e-mail EAP members an electronic template time sheet for panel work.

5. Expert Advisory Panel's role in Casework

- 5.1 Maria Mansfeld introduced the paper regarding the panel's role in Casework.
- 5.2 James Titcombe asked at what point his active role in campaigning for patient safety could be considered a conflict of interest with his role as an EAP member.
- 5.3 Amanda Campbell advised that all potential conflicts of interest should be treated as 'live' issues to be reviewed on a case by case basis with advice from PHSO's Legal Team.
- 5.4 Bill Kirkup explained that he has already shared with Rob Behrens by e-mail a brief overview of two investigations he has been involved in which could pose conflicts of interest in some areas of EAP work.
- 5.5 Nick Coleman encouraged all members to declare all potential conflicts of interest with PHSO both from the outset and on an ongoing basis thereafter, however tenuous they may be. All **agreed** with this approach.
- 5.6 **Action:** All members to share brief overviews of potential conflicts of interest with EAP work before undertaking advisory work for the Ombudsman.

6. Project / work allocation

- 6.1 *Suzy Ashworth joined the meeting in-person.*
- 6.2 Members welcomed Suzy Ashworth to the meeting and introduced themselves.
- 6.3 Rob Behrens explained four priority areas of PHSO investigatory work requiring prompt EAP advice and input, asking members for honest feedback on these suggestions:

Review of PHSO's previous handling of now-closed complaints

- 6.4 Complaint brought by [REDACTED] regarding [REDACTED]
- 6.4.1 Rob Behrens explained that PHSO received this complaint in August 2014, but that the investigation did not conclude until December 2017.
- 6.4.2 Amanda Campbell explained that the report into how we handled [REDACTED] complaint is due to be published after purdah, and she expects this to be included within the Public Administration and Constitutional Affairs Committee (PACAC) in around February or March 2020.

6.4.3 Bill Kirkup declared a conflict of interest in this case. He led the PHSO investigation which was triggered in part by ██████ complaint.

6.4.4 James Titcombe declared a potential conflict of interest in this case: He has met ██████ in person and communicated with ██████ by e-mail a small number of times, in relation to his patient safety campaigning work.

6.4.5 Discussion followed around whether James' declaration in 6.2.3 represents a conflict of interest. Amanda Campbell clarified that PHSO's investigatory work into ██████ complaint concluded in December 2017 and EAP comment is sought only in PHSO's review of how this was handled. In this way, previous communication with ██████ would not be a conflict.

6.4.6 Rob Behrens explained that, whichever panel member agrees to take on this work, this will be disclosed to ██████ in the interests of transparency.

6.4.7 Rob Behrens asked James Titcombe to consider undertaking this piece of work.

6.4.8 James Titcombe **agreed** in principle to undertake EAP work on this report, following further review and consideration of potential conflict of interest.

Advice on PHSO's current handling of sensitive high-risk cases:

6.5 Complaint brought by ██████ regarding ██████

6.5.1 Bill Kirkup declared a conflict of interest in this case: He has been a non-executive Director on the Board of The Leeds Teaching Hospitals NHS Trust since April 2014.

6.5.2 Rob Behrens asked Nick Coleman to consider undertaking this piece of work.

6.5.3 Nick Coleman **agreed** in principle to provide EAP comment on this investigation, further to consideration of more information about the case itself and the work required.

6.6 Complaint brought by ██████ regarding ██████

6.6.1 This complaint is part of a cohort of pilot work arising from the Clinical Advice Review, which involves sharing the clinical advice with all parties

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6.7.1 This complaint is part of a cohort of pilot work arising from the Clinical Advice Review, which involves sharing the clinical advice with all parties.

6.8 Discussion followed about the use of clinical advice within the PHSO investigatory process, and the outcomes of the recent Clinical Advice Review:

- James Titcombe explained that the Police commissioned five pieces of clinical advice in the investigation of his son's death, and that they were conflicting and contradictory in areas.

- Bill Kirkup highlighted his concern that the inherently technical nature of clinical advice can sometimes miss the core fundamentals of care, and that good clinical practice is not just about making the right technical decisions.
 - Amanda Campbell explained that Caseworkers had historically been trained to ask very specific questions of clinical advisers (informed by the complaint scope agreed with the complainant and organisation(s) named in the complaint). However, the Clinical Advice Review had identified some difficulties with this approach, so a pilot has arisen from this which allows the adviser to:
 - i. Read the provisional investigation report and provide comment on how their advice has been used if necessary;
 - ii. Identify 'bigger issues' i.e. raise with the Caseworker any evidence of failings they have identified within the material evidence which may fall beyond the scope of investigation;
 - iii. Join a clinical panel with other advisers if multiple specialties have been engaged to comment on the material evidence (analogous to Multi-Disciplinary Team Meetings in clinical practice.)
 - Suzy Ashworth explained that the Independent Sector Complaints Adjudication Service (ISCAS) process allows for all stakeholders to comment on the draft questions to independent advisers. This helps to ensure that the questions get to the heart of what is being complained about. Amanda Campbell observed that this is similar to the process of 'scoping' complaints undertaken at PHSO.
- 6.9 **Action:** James Titcombe to undertake comment on the (closed) case report regarding the complaint from █████, contingent on the outcome of further review and consideration of potential conflict of interest.
- 6.10 **Action:** Nick Coleman to undertake comment on the (active) case regarding the complaint from █████, contingent on the outcome of further review and consideration of the case itself and EAP member work required.
- 6.11 **Action:** Ombudsman to consider further which EAP members are most appropriate to provide comment on the remaining active investigations outlined above, with discussion and allocation to be completed prior to the next formal panel meeting.
- Policy work**
- 6.12 Rob Behrens explained that the organisation has committed through the Service Charter to commissioning research and publishing this quarterly. The Public Affairs and Insight Team is currently building a focus group of complainants for qualitative feedback on the Complaints Standard Framework and perceptions of impartiality.
- 6.13 Rob Behrens asked Suzy Ashworth to consider undertaking this piece of work.

6.14 Suzy Ashworth **agreed** to undertake EAP work relating to this qualitative research.

6.15 Amanda Campbell said that discussions around Ombudsman impartiality are often affected by whether a case is upheld or not, and asked members to consider and suggest on an ongoing basis what more PHSO can do to tackle this.

6.16 **Action:** PHSO to confirm scope of work

Other Ombudsman priority issues

6.17 Rob Behrens outlined further issues of priority to him as Ombudsman, on which he would like to engage EAP member advice in 2020:

- Reviewing the Clinical Advice Review pilot;
- Developing 'balance of evidence' guidance for Caseworkers;
- Exploring the relationship between legislated 'safe space' and accountability

7. Any Other Business

7.1 Members requested access to information about some cases which are similar to those on which they agreed to provide comment in this meeting. Rob Behrens and Amanda Campbell agreed to this suggestion.

7.2 **Action:** Amanda Campbell to provide members with a small number of anonymised cases similar to those on which they have agreed to provide comment in this meeting.

The meeting ended at 13.07