

Reviewing complaints about us in line with the Principles of Good Complaint Handling

This section explains what conducting a review of a complaint about PHSO in line with the Principles of Good Complaint Handling means. The Principles of Good Complaint Handling flow from the Principles of Good Administration and also take into account the Principles for Remedy. Our Principles are intended to help us, and other public bodies, deliver first-class complaint handling to customers.

4.1.1 Getting it right

- Acting within the Ombudsman's statutory powers, other relevant legislation and with regard for the rights of those concerned
- Ensuring that senior management at PHSO provide leadership to support good complaint management and develop an organisational culture that values complaints
- Undertaking reviews in line with our governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints
- Including complaint management (complaints about us) as an integral part of service design
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints
- Signposting the complaints procedure clearly, in the right way and at the right time

4.1.2 When considering (reviewing) a complaint about PHSO we will act in accordance with the Parliamentary Commissioner Act 1967, the Health Service Commissioners Act 1993 and any other relevant legislation (for example, the Data Protection Act 1998).

4.1.3 Senior managers at PHSO will facilitate the functioning of the complaints about us process in order to allow complaints to be effectively and efficiently considered and for the lessons arising from complaints to be shared, considered and learned from across the whole of PHSO.

4.1.4 We will undertake reviews in line with our governance arrangements, such as PHSO's Casework policy and guidance and other PHSO policy and procedure. Specifically, we will act in accordance with our published procedure on handling complaints about us, ensure that we handle confidential information properly and that we act in accordance with our equality and diversity vision statement and with regard to human rights.

4.1.5 The complaints about us process is fully integrated into the PHSO casework process and is, in addition, an element of PHSO's Casework Quality Framework by helping to monitor quality assurance and identify lessons and themes to feed into quality improvement.

4.1.6 We will use appropriately trained, experienced and competent staff to carefully consider complaints about us. We will take proper account of good

practice in reaching our decisions and seek the view of relevant experts, both internally and externally, where appropriate.

4.1.7 We will, in most cases, notify complainants about our complaints procedure in our first written response to their initial enquiry made to PHSO. We will also notify complainants about our complaints procedure as required in other circumstances (for example, if a complainant expresses dissatisfaction with a decision or action in later contact with PHSO).

4.1.8 Being customer focused

- Ensuring that our complaints procedure is clear and simple to follow
- Ensuring that complainants can easily access our internal complaints procedure, and informing them about advice and advocacy services if appropriate
- Establishing a clear definition of the review by listening to the complainant and understanding the outcome they seek
- Managing complainants' expectations
- Acknowledging complaints, telling complainants how long they can expect to wait for a reply and keeping all parties regularly informed of progress
- Dealing with complaints promptly, avoiding unnecessary delay and in line with published service standards.
- Dealing with complainants sensitively, bearing in mind their individual circumstances
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate
- Producing decision letters and other communications that are well structured, clear and in plain, understandable and appropriate language

4.1.9 Our complaints procedure will be simple and clear, comprising a single stage review process.

4.1.10 We will be flexible by accepting complaints in a form which meets the individual needs of a complainant: this may be over the telephone, by email or by letter.

4.1.11 We will take reasonable steps to fully understand the complaint and the outcome sought, contacting the complainant for clarification where necessary.

4.1.12 Where we cannot meet the complainant's expectations or where aspects of the complaint are specifically excluded from PHSO's jurisdiction we will advise the complainant of this at an early stage.

4.1.13 When we receive a complaint about us we will write to the complainant promptly to acknowledge their complaint and tell them who will respond to their complaint and by when. During the review process we should provide the complainant and, where appropriate, the body complained about, MP or other third party (if one is involved) with acknowledgements and updates within the timescales set out in our guidance or the timescales we have set on the individual case (as applicable).

4.1.14 We will avoid delay and ensure that we identify the key issues at the earliest opportunity so that the review progresses as quickly as possible and in accordance with our customer service standards. If enquiries are required, we will aim, where possible, to ask everything we need to know in one enquiry.

4.1.15 We will be alert to the differing needs of our customers and respond flexibly to the circumstances of the case. Any action we intend or do not intend to take in relation to equality, diversity or human rights issues should be recorded in the review analysis. We will take appropriate action if there is a need to liaise, or to respond jointly with other parties (such as other Ombudsman in joint-working cases).

4.1.16 All communications in relation to a review, whether they are telephone calls, emails or letters, will be clear, well structured, in plain, understandable and appropriate language and follow the relevant guidance.

4.1.17 Being open and accountable

- We will publish clear, accurate and complete information about how to complain and will be open and clear about the process and criteria for considering a complaint
- Ensuring that our service standard for completing reviews is published
- Completing a review analysis that clearly sets out the complaint and our understanding of it as well as a recommended course of action
- Decision letters should clearly explain the reasons for the decision and the outcome of the review of the complaint
- Create and maintain reliable and usable records, including the evidence considered and the reasons for decisions, ensuring an accurate, complete and up to date corporate record is maintained for each case

4.1.18 Our complaints about us policy will be published on our website, available in leaflets and our Casework Policy and Guidance on the complaints about us process will be published as part of our FOI publication scheme.

4.1.19 Our service standard for reviewing complaints about us will be published on our website, in our leaflets and in our Corporate Business Plan.

4.1.20 We will be open and transparent about the criteria we have used for reaching the decision on a complaint about us and that will be set out in both the review analysis and the response to the complainant.

4.1.21 The review analysis is the record of our view of the complaint and the actions we intend to take and will be comprehensive enough to enable anyone coming new to the case to identify the actions we have taken and our rationale for that. Any comments that we receive from the complainant and the body complained about in response to any enquiries will be properly considered. There will be a record of what action we intend/do not intend to take in response to the comments we received and why we have decided that. The analysis will be clear, identifying whether or not the complaint against PHSO should be upheld, not upheld or partially upheld.

4.1.22 We will clearly explain the reasons for the decision in the letter responding to the complaint and the decision should be justifiable and flow clearly from the evidence. Our decisions should identify the facts of the complaint and assess them against what should have happened, the standard that applied in the particular case and PHSO's relevant guidance or internal policy at the time. If it is not appropriate to respond in our decision letter to each point raised by the complainant, then we will explain why.

4.1.23 We will handle and process evidence and information we have received properly and appropriately in line with our own guidance and relevant legislation (including the 1967 and 1993 Acts and the Data Protection Act 1998), respecting the privacy of personal confidential information as required.

4.1.24 We will have a reliable electronic record to evidence what has happened during the course of a review. The review analysis, review screen, risk assessments and the complainant's details should be kept up to date on our corporate record.

4.1.25 Acting fairly and proportionately

- Treat complainants impartially and without unlawful discrimination or prejudice
- Ensuring that complaints are considered thoroughly and fairly and based on the available facts and evidence. Being consistent with other similar cases while giving consideration to the individual merits of the complaint
- Being proportionate to the circumstances complained about both in the process of the analysis and in the decisions we make
- Ensuring that reviews are undertaken by someone not involved in the decision/events leading to the complaint
- Acting fairly towards staff complained about as well as towards complainants

4.1.26 We will respect the diversity of complainants. We are committed to providing equal access to the review process for everyone by ensuring that we have fully understood their perspective and the issues raised, and have made appropriate adjustments where necessary.

4.1.27 We will treat complainants without unlawful discrimination or prejudice and identify any potential conflicts of interest and deal with them in line with our Conflicts of interest policy.

4.1.28 Complaints will be dealt with objectively, fairly and consistently, so that similar circumstances are dealt with in a similar manner; a difference in the decision in respect of two cases about the same sort of complaint should be justified by the individual circumstances of the complaint or the complainant.

4.1.29 We will not do more than is necessary to address the complaint. When gathering evidence and undertaking the review more generally we will give consideration as to whether the actions we are taking are proportionate to the quantity and quality of the information we will obtain and to the likely outcome.

4.1.30 Where a complaint about us has been received prior to the completion of a case (whether assessment or investigation), we will ensure, as far as is possible, that the complaint about us does not impact on the progress of that case. We will also ensure that receipt of such a complaint does not prejudice our continued handling of the case.

4.1.31 The Reviewer analysing the complaint will not have had prior involvement in the events/decision that gave rise to the complaint.

4.1.32 Where a complaint has been received about a decision made by and/or the conduct of an individual member of staff, relevant staff will be notified of the complaint and consideration will be given to providing those staff members with an opportunity to provide information for the review of the complaint.

4.1.33 PHSO will proactively manage unreasonable behaviour by complainants, in line with its specific policy.

4.1.34 Putting things right

- Acknowledging mistakes and apologising where appropriate
- Putting mistakes right quickly and effectively
- Offering a fair and appropriate remedy when a complaint is upheld

4.1.35 Where a review identifies mistakes in our earlier decision making or service we will acknowledge those mistakes and apologise where that is appropriate.

4.1.36 We will ensure that where mistakes are identified we take action to put them right quickly and effectively.

4.1.37 We will ensure that where mistakes are identified we consider all relevant factors, including the injustice that has been suffered, and offer an appropriate remedy in line with PHSO's Principles for Remedy. That will include consideration of any injustice that has arisen from the complainant's need to pursue the complaint as well as from the original matter of dispute.

4.1.38 Seeking continuous improvement

- Having systems in place to record, analyse and report on the learning from complaints
- Carefully considering the outcome of review decisions and making changes and improvements to PHSO's service design and delivery
- Regularly reviewing the lessons to be learned from complaints

4.1.39 We will draw out lessons from complaints about us once the review process is complete and pass them to relevant staff to consider such as the Head of the Review Team, Outcomes and Learning Directorate or, if appropriate, other senior staff to take forward.

4.1.40 The outcomes of individual reviews cases will be fed back, via the line management chain to the staff who were involved directly in the case. However,

wider lessons will be shared with staff by a variety of means including PHSO Intranet, Casework News and through being fed into updated or new Casework Policy and Guidance.

4.1.41 The outcomes of complaints about us will be recorded, analysed and fed into PHSO's Corporate Performance information.

4.1.42 We will share knowledge and learning from reviews across the Office, including information about the handling of specific types of complaints and complaints against specific bodies, to improve our current and future work. This will enable us to deal with cases in a more co-ordinated and more consistent way.

4.1.43 We will review our complaints process regularly to ensure it is fit for purpose.

Complaints about us: policy and process

Why does PHSO need a complaints procedure?

4.2.1 PHSO is committed to applying to itself the standards that we expect of others in handling complaints and we welcome complaints as an important aid to continually improving our service. Section 4.1 explains how we apply the Ombudsman's Principles (with particular reference to the Principles of Good Complaint Handling) to complaints made about our actions or decisions.

What is a complaint about us?

4.2.2 A complaint about us is an expression of dissatisfaction with a PHSO decision, our service or our response to a request for information under the Freedom of Information or Data Protection Acts. However, we will not normally consider complaints where a person simply says that they are unhappy with or disagree with what we have done: we would normally expect the person to tell us why they are unhappy (for example, what we have done wrong or what aspect of their complaint they feel we have not considered fully).

4.2.3 If any member of staff is uncertain as to whether a contact from a complainant or other party constitutes a complaint about us then the Review Team should be contacted for advice.

4.2.4 The majority of complaints about us are made by people who have had a case considered (or have a case under consideration) by PHSO. But complaints can be submitted by other parties (including other stakeholders and bodies in jurisdiction).

How can someone complain about us?

4.2.5 Complaints may be made at any stage in our consideration of a complaint or freedom of information or data protection request and may be received in any part of the Office.

4.2.6 A person can submit a complaint about us in a variety of ways, including:

- contacting a member of PHSO's staff
- calling our dedicated 'complaints about PHSO' helpline on 0300 061 4076
- emailing us at complaintsaboutphso@ombudsman.org.uk

Action on receipt of a complaint about us

4.2.7 All members of staff have a responsibility to report any complaints they receive to the Review Team within three working days of the complaint arriving in the Office, including those received by telephone or email (PHSO policy requirement).

4.2.8 Once a complaint (or potential complaint) is received by the Review Team, they will undertake, as necessary, further contact with the complainant in order to seek clarification of what they are complaining about, the reasons for that complaint, what they are seeking to achieve and to confirm whether they wish to proceed with a complaint about us. While we do all we can to look into complaints, in circumstances where PHSO's case records relevant to the complaint about us have been destroyed in line with our records management policy (normally 14 months after the last substantive action taken by us), we may be unable to look into the concerns raised because of the lack of documentary evidence.

4.2.9 All complaints about our casework or the service we have provided will be logged, acknowledged and managed by the Review Team (PHSO policy requirement).

4.2.10 The Head of the Review Team (or at their discretion, another Review Team Member) will assess the complaint about us, including its complexity, risk and priority and will allocate the complaint to an appropriate Reviewer (the Reviewer will have had no previous involvement in the decision/events that led to the complaint) (PHSO policy requirements).

4.2.11 Circumstances in which we might prioritise a review include:

- the complainant being ill or vulnerable
- there being some specific time-sensitive issue relating to the complaint
- complaints about decisions not to investigate on the grounds that the enquiry was premature (this is to avoid the situation whereby the review of the case is overtaken by events and the enquiry ceases to be premature before the review of the previous decision has been completed. This can apply in cases where, for example, we have referred the matter to a second tier complaints handler, such as the Adjudicator or the Independent Case Examiner)

4.2.12 The Review Team will send an acknowledgement of the complaint about us to the complainant. The Review Team will also advise the original case owner or person subject of the complaint of the review and who they can contact in the Review Team for further information. The case owner will also be advised to track

the progress of the review on Visualfiles. The Reviewer will notify anyone else who they think should know of the complaint, for example, the relevant Director (PHSO policy requirements).

Conducting the review

4.2.13 There is a general presumption of the Reviewer making contact with the complainant at the outset of the review process (preferably by telephone) in order to give the complainant the opportunity to explain their complaint and the reasons for it. The type and quantity of work required will depend on the circumstances of each individual case. Some may be analysed simply on the papers available but others may need enquiries to be made of, or liaison with, staff elsewhere in the office, the complainant and the body complained against. Reviewers will seek, where necessary, specific input from staff whose cases or actions have been made the subject of a complaint about us.

4.2.14 If, during the course of a review of a complaint about a decision, a service complaint is also identified (or if a complaint about a decision is identified during a review of a service matter) then the Reviewer will alert the Head of the Review Team who will ensure that the additional complaint is also logged on Visualfiles and is actioned appropriately. In most cases, it will be preferable for the same Reviewer to undertake the consideration of the additional complaint.

Complaints about us that require a new assessment

4.2.15 Where a complaint is made about a decision not to investigate (and this can include a decision to limit the scope of a proposed investigation) it is possible that a new assessment may be required (for example, if fresh evidence or further concerns are raised at the review stage). If a new assessment is required then the review team will liaise with CS&A to facilitate this and a judgment will be taken on a case by case basis as to whether the new assessment should be undertaken separately, or whether it will be responded to as part of the review (in the latter case CS&A would provide relevant content for inclusion in the review letter). Any assessment will be undertaken in line with our normal procedures, including the Delegation scheme.

4.2.16 In any event, where a new assessment is required the case must be referred to an Assessment Panel for discussion, even if the recommendation is to accept the complaint for investigation. The only exception is where the reassessment results in the case being closed as premature 'further work required by body': in those circumstances the case outcome should be agreed at Director level.

4.2.17 It is also possible that a review request based solely on the provision of further information that was not available to PHSO at the time the original decision was taken, will not be treated as a review but will be passed to CS&A as a fresh enquiry. Again, a judgment will be taken on a case by case basis.

Analysing complaints about us

4.2.18 Reviewers must prepare an analysis of the complaint about us. The analysis should normally cover the following:

- Type of complaint
- Case background
- Summary of the complaint about us to be reviewed
- Analysis
- Recommendation
- Handling issues/lessons

4.2.19 A more detailed explanation of the review framework is contained in (Annex A).

Remedy

4.2.20 If a Reviewer is recommending that we uphold or partially uphold a complaint about us then the review analysis should include, where appropriate, a proposal as to any remedy or redress that PHSO should offer (with appropriate reference to the Principles for Remedy).

4.2.21 We will consider fully and seriously all forms of remedy (such as an apology, an explanation, remedial action or financial compensation) and provide the appropriate remedy in each case.

4.2.22 (Note: in the last two examples given above, the remedy for the complaint about us is the **overturning** of the previous decision and the **reopening** of the case for investigation. A decision to reopen does not imply that the outcome of any such investigation will result in the original complaint being upheld. That can only be determined at the conclusion of the investigation).

4.2.23 Any decision to reopen an investigation must be approved by the Ombudsman in line with the PHSO Delegation scheme (PHSO policy requirements).

4.2.24 For further information about reopening investigations please refer to Annex B

Drafting review decisions

4.2.25 Reviewers must also prepare a draft response to the complaint about us for signature in line with the decision making arrangements in paragraphs 4.2.28 to 4.2.29. Each letter will be tailored to take account of the particular circumstances of the case. However, draft review letters must contain the following (PHSO policy requirements):

- A clear statement of what the outcome of the complaint is.
- If a complaint had been fully or partly upheld, an apology and, where appropriate, an explanation of the specific action that PHSO will take (and by when) to provide a remedy.

- An explanation of how any future correspondence on the matter will be treated. In most cases, we will be advising complainants that the review of the matter is complete and, whilst we will acknowledge receipt of further correspondence and consider it, we will not usually respond unless it requires further action.

4.2.26 Other general points to bear in mind when drafting a review letter:

- The letter should accurately reflect the proposed decision.
- Focus on presenting clear and logical arguments for the decision.
- Try to avoid long chronologies or wholesale inclusion of evidence unless these are really necessary.
- When material needs to be included that would detract from the clarity of the body of the decision, consider using annexes. The kinds of material that might be placed in an annex include chronologies, details of financial calculations or payments and lengthy extracts from other evidence (for example, a direct quote from a body's response to us) or photocopies of documents upon which we have relied in reaching our decision or which have influenced our decision.
- Try to avoid repetition.
- It is important to have a letter which flows logically and makes the arguments clear, rather than packing in too much information.
- Remember to explain acronyms and to use plain language.
- Use active language and short sentences.
- Have empathy with the reader and write in a way that will promote understanding.
- A decision may be addressed to a Member of Parliament or a professional representative but, in drafting it, we should have the needs of the complainant or the aggrieved party in mind.

4.2.27 Please remember to take account of any other relevant communication issues. For example:

- If English is not the complainant's first language, should we have the decision letter translated? Please refer to the Adjustments for communications needs guidance for more information on translation services.
- If the complainant is partially sighted, should we use a larger font or coloured paper?
- Has the complainant requested the decision in a particular format, for example, by email? Note: if we send a copy of a decision letter by email then it must be sent in a secure pdf format. (PHSO policy requirement).

Decision making arrangements

4.2.28 The review analysis, draft reply and relevant files will then be passed from the Reviewer (via the Head of the Review Team as appropriate) to a senior member of PHSO staff who will approve and sign out a response to a complaint about us in line with the following (PHSO policy requirement):

- **Complaints about service:** The Ombudsman or The Deputy Ombudsman
- **Complaints about investigations:** The Deputy Ombudsman
- **Complaints about freedom of information or data protection requests:** The Deputy Chief Executive or Head of Deputy Chief Executive's Office and Governance
- **Complaints about corporate resources issues:** The Deputy Chief Executive
- **Complaints about a decision not to investigate or to limit the scope of an investigation:** The Director of Outcomes and Learning; or Director of Parliamentary Investigations (health cases only); or Director of Complex Parliamentary Investigations (health cases only)
- **Complaints where it is recommended (in respect of a complaint about a decision not to investigate or to limit the scope of an investigation; a complaint about investigations or a complaint about service) that the complaint is upheld or partially upheld:** The Ombudsman or Deputy Ombudsman

(note: this reflects the normal level of sign-off for such decisions but it may be varied by agreement with the Ombudsman in line with business need)

4.2.29 In addition to the list above, some cases will require a decision and response by the Ombudsman. The following types of complaint about us which will require this are (PHSO policy requirement):

- where the Ombudsman signed off the decision complained about
- where the Deputy Ombudsman signed off the decision complained about
- where the Deputy Chief Executive signed off the decision complained about
- complaints which are considered to be high risk (for example, complaints that raise serious allegations which could threaten the reputation of the Office or body complained about is dissatisfied with our decision)

Completing the complaints process

4.2.30 Once a response to the complaint has been sent, the Head of the Review Team, or the Ombudsman's Casework Management Team, will arrange for the relevant screen in Visualfiles to be completed to close off the review. Any lessons learnt will also be noted.

4.2.31 Once the complainant has received a response to the complaint, we will normally draw a close to the correspondence (how we intend to handle future correspondence will have been explained in our reply to the complaint about us - see 4.2.25). Further correspondence will be considered by the Ombudsman's Casework Management Team. Where such correspondence is not considered to raise any issues which require a reply, we will not send any further response beyond an acknowledgment slip.

'Do not acknowledge' cases

4.2.32 The decision to apply a new 'do not acknowledge' instruction can only be made by the Ombudsman (PHSO policy requirement) . Visualfiles allows such

decisions to be noted and a warning flag will display when the particular case is opened. Correspondence received on a case that has been classified as do not acknowledge will be logged and added to Visualfiles and will have its content considered by the Ombudsman's Casework Management Team. However, we will not issue an acknowledgment or any form of substantive reply, unless we see a compelling reason to do so. When any member of staff receives further correspondence on an existing 'do not acknowledge' case, the letter and the case file should be passed to the Casework Management Team.

Learning from complaints

4.2.33 The Head of the Review Team will regularly review statistical information on the complaints received, including the subject matter of the complaint, whether the complaint was upheld or partially upheld and the method of resolution. The Head of the Review Team will feed that information into PHSO's corporate performance monitoring arrangements.

4.2.34 The Head of the Review Team will usually feed back lessons learned on specific cases at Corporate, Divisional, Directorate, Unit or individual level as appropriate. Details of lessons learned are contained on the Review Team section and are also publicised in Casework News. Those lessons will also be logged within the Outcomes and Learning Directorate and, where appropriate, fed through into the work of the Casework policy and guidance and Casework Knowledge and Learning Teams.

Annex A: Review Analysis Framework

The framework can be used as the basis for a Reviewer's analysis of any complaint about us. The framework can be adapted, as necessary, to fit the particular circumstances and complexity of the case.

Type of complaint:

- Is it a complaint about a decision, service, FOI/DPA response or a hybrid (for example, decision and service complaint)?
- (If applicable) What was the decision being complained about: decision not to investigate; investigation report; proposal to investigate but with limited scope.

For investigation reports this should say whether the outcome was to uphold, not uphold or partially uphold.

For decisions not to investigate this should refer to the 'Closure type' and 'Closure detail' codes (for example, 'General discretion' and 'no probability of worthwhile outcome').

Case background:

A brief summary of the complaint originally put to PHSO (for example, what bodies were complained against and the main allegations made against them) and any

other key stages in the consideration of the case within PHSO (for example, when the case was received, when the main stages of the consideration of the case were completed (assessments, Panel discussions etc.), any periods of significant delay and decision dates).

Summary of the complaint about us to be reviewed:

- A summary of the complaint about us which identifies clearly and succinctly what the complainant feels PHSO had done wrong and what they want to achieve from their complaint.

Analysis

Detailed consideration of the complaint against PHSO.

It should clearly identify and analyse in depth the crux of the complaint against PHSO. We should look to establish:

- What did happen?
- What should have happened?
- Whether any difference between the two appears significant enough to warrant the complaint against PHSO being upheld (either in full or in part)?

The analysis should, as far as is possible be self-standing in that the person making the final decision on the Reviewer's recommendation should be able to do so based upon the Reviewer's analysis and draft reply alone. If there are any specific records or documents which (due to their content, length or complexity) cannot be adequately summarised in the analysis then they should be either copied and annexed to the analysis or cross-referenced in the analysis and flagged clearly on the file.

The analysis should also identify the points that need to be explicitly dealt with in the review response.

Reviewers should avoid:

- straying outside of the complaint made against PHSO;
- automatically entering into a review of all our work/decisions on the case;
- 'fishing trips' for things that could have been done better/undertaken in more detail;
- redoing the investigation/decision not to investigate;
- reworking the consideration of comments on a draft investigation report.

Recommendation:

This should state clearly the proposed outcome of the complaint about us - whether it should be upheld, partially upheld or not upheld and (drawing upon the more detailed analysis already set out above) why that conclusion has been reached.

Highlight any particular considerations arising from the proposed draft response (including any adjustments that might need to be made in communicating the decision and explanations for the length or structure of the response).

If the Reviewer is recommending that we uphold or partially uphold a complaint then that should include, where appropriate, a proposal as to any remedy or redress that PHSO should offer (with appropriate reference to the Principles for Remedy).

Handling issues/lessons

The Reviewer should identify any handling issues arising from the complaint (this could be an example of good practice or an illustration of the Ombudsman's Principles). The Reviewer should also identify here whether the case raises any equality and diversity or human rights issues.

Annex B: Reopening investigations

Where the possible need for a new investigation is identified as part of a review of a complaint about us, the case must be referred to the Ombudsman, who will make the decision (in line with the PHSO Delegation scheme) on whether to reopen the case (PHSO policy requirement).

Circumstances in which an investigation might be reopened

Investigations will be reopened very rarely and only when the case for doing so is compelling. The list below (which is not exhaustive) summarises some of the circumstances which might lead to an investigation being reopened:

- the review has identified that new and significant evidence has been presented after the report was issued that could not have been made available during the original investigation, or
- the review process has identified serious flaws in the original investigation that justify a reinvestigation (for example, evidence was not properly taken into account; our judgment was not sound; or there is evidence of bias or partiality), and
- there is evidence of serious hardship or injustice that has not been addressed by the original investigation, and
- there is a real possibility that a further investigation might identify an effective remedy

Process for reopening an investigation

If the Ombudsman accepts the proposal to reopen an investigation, then the body and/or person complained about will be notified of the proposal to do so, and their views sought and considered before a final decision is made.

The letter should summarise the key elements behind the proposed decision to reopen the investigation and the following form of words (or similar to match the circumstances of the case) should then be used:

‘In the light of the above, I have concluded that the reasoning in my report is not sufficiently robust to withstand scrutiny. I have therefore decided, subject to my consideration of any representations that you may make, to reopen my investigation and, on completion of that investigation, to produce a fresh report.

You should not assume that the conclusions in my further report will necessarily be different; whether or not that proves to be so will depend on the outcome of my further investigation. In any event I will give [you/your Trust/Department] and the complainant the opportunity to comment on my draft conclusions before finalising my further report.

I propose to commence my further investigation on [date]. If you wish to make representations on my proposed course of action, please let me have these in writing by [allow at least 14 days]’

In each case, the fairness to the complainant of reopening the case will be balanced against the potential unfairness to the person or body complained about, and a proportionate decision taken.

All decisions will be fully recorded on the file and on Visualfiles, with detailed reasons and will be communicated in writing to all parties (PHSO policy requirement).

Where a decision is taken to reopen an investigation, a specific decision must be made as to whether the re-investigation will be carried out by the same Investigator (PHSO policy requirement).

Re-investigation

Re-investigations should be treated as a priority.

A complainant’s expectations will need to be managed carefully and they must be told in writing that re-investigation does not automatically mean that the outcome of the investigation will change (PHSO policy requirement).

The scope of the reopened investigation should be set out in writing to all parties to the complaint as the re-investigation may not cover exactly the same ground as the first (PHSO policy requirement).

The reopened case will be investigated in line with the requirements of the PHSO Casework Policy and Guidance Framework in the same way as all other investigation work (for example, there will need to be an investigation plan, parties need to be kept informed of progress and draft reports shared).