

Sent by email

30 April 2021

Dear Mr Madders,

I note the further set of Parliamentary Questions, which you have tabled in relation to the operational performance of the Parliamentary and Health Service Ombudsman (PHSO). PHSO is independent of Government and accountable directly to Parliament through the Public Administration and Constitutional Affairs Select Committee. As such, the Chancellor of the Duchy of Lancaster is not in a position to respond on PHSO's behalf. I am responding to you directly.

The time it takes to progress complaints

You enquired about the increase in both the length of time complainants are waiting for their complaints to be allocated to a caseworker after they bring a complaint to PHSO, and the time it takes for PHSO to close complaints. As I explained in my letter of 26 March, the pandemic has had a significant impact on PHSO, the people who use our service and the organisations they complain about. Like many other public sector organisations, productivity at PHSO has decreased over the past year due to caring responsibilities, sickness and the ability of bodies in jurisdiction to respond to our questions. Additionally, we have been required to introduce new IT systems and processes to enable staff to manage casework effectively from home.

In March 2020, after careful consideration, we took the decision to pause work on health complaints due to clinicians being under extreme pressure to deal with the emergency. NHS complaints staff were also being deployed to front-line support roles. We started receiving and working on health complaints again from 1 July 2020. However, many are progressing at a slower pace than usual due to some NHS organisations still experiencing challenges in responding to complaints and therefore asking us to delay our work or request significant extensions to our deadlines.

On 15 April we wrote to all Members of Parliament to explain how PHSO planned to address the growing queue of complaints, which currently stands at more than 3,000. In the last two years, we have revised our casework processes to streamline decision-making so that we resolve complaints at the earliest opportunity. However, we recognised that without further action to bring down the queue and with finite resources, all complainants, including those bringing serious failing to us, would be required to wait far too long.



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We therefore decided that we should focus PHSO's resources on the more serious issues, where people may be facing significant injustices, and the potential for organisations to learn may be greatest. This will allow PHSO to look at complaints more promptly than would otherwise be possible in these exceptional circumstances, and would also mean that NHS organisations would not be required to look into less serious issues that arose many months or even years ago while they are dealing with the aftermath of the pandemic.

In practice this will mean that we continue to examine all complaints brought to PHSO. If a complaint can be resolved quickly, we will do so. But if it cannot, and the impact of the claimed injustice on the complainant is relatively limited, we will not consider that complaint any further. The details of this approach are set out on [our website](#).

The Severity of Injustice scale

You also enquired about PHSO's use of the [Severity of Injustice](#) scale to decide which complaints will be taken forward, what the impact of this will be, and whether any discussions had taken place on this subject between PHSO and the Cabinet Office. The change in our process described above will apply to all complaints about the NHS in England where, if we were to uphold them, the likely impact would be at level 1 or 2 on the scale. It will apply to new complaints as well as those already lodged, but not yet allocated to a caseworker for consideration.

An example of a level 1 injustice is an annoyance, frustration, worry or inconvenience, typically arising from a single (one-off) incidence of maladministration or service failure, where the effect on the individual is of short duration, and where there are no other adverse effects or ongoing wider impact. A level 2 injustice will be generally similar to, but more serious than cases involving level 1 injustice, but where we consider that an apology on its own is not an adequate remedy.

Before announcing our decision to implement these changes, our new process was evaluated through an Equality Impact Assessment. This is a three-stage process involving completion of a screening tool to ascertain whether the changes to PHSO's process might impact on any protected characteristic groups. This is followed by an initial assessment where impacts are identified along with the actions that would be taken, and which set out when and how these will be measured. These are then reviewed at the final stage of the process to ensure that actions achieved the desired outcome and are either mitigated in the case of negative impact or realised in the case of positive impact.

We are committed to ensuring that our service remains accessible and it is extremely important that our new approach does not disadvantage people who may be unable to articulate their complaint. As part of the new process, we have put in place steps to make sure a person's ability to interact with PHSO has not affected their ability to describe how they have been affected. This will work in the same way as when we agree reasonable adjustments for a complainant through other processes and may, for example, involve support from an advocate.



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As PHSO is impartial and independent of Government, we do not require consent from Government to make changes to the way we look into complaints. However, I have exchanged letters with the Minister for Patient Safety, Suicide Prevention and Mental Health on this issue and the exchange has been constructive and useful. I would also like to add that these changes to our casework management only affect complaints about the NHS and not those about Government departments and agencies.

I hope that you find this information helpful. I would be happy to arrange a meeting should you wish to discuss this matter further. Your Office can contact my Assistant Private Secretary, Faye Glover faye.glover@ombudsman.org.uk, to arrange a convenient time.

Your sincerely,

Rob Behrens

Rob Behrens CBE
Ombudsman and Chair
Parliamentary and Health Service Ombudsman

cc. Rt. Hon Michael Gove MP, Chancellor of the Duchy of Lancaster
William Wragg MP, Chair of Public Administration and Constitutional Affairs Committee
Amanda Amroliwala CBE, PHSO Chief Executive Officer
Elisabeth Davies, PHSO Senior Non-Executive Board Member



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