

## Parliamentary and Health Service Ombudsman (PHSO) Casework Policy and Guidance

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#### 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.

4.2.10 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 consideration

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.

4.2.17 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 [\[link\]](#).

### **Remedy**

4.2.20 If a Reviewer is recommending that we uphold or partly 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 [\[link\]](#)).

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. The following are examples of such outcomes:

- A complainant was dissatisfied because our investigation found that a Primary Care Trust's decision, that her mother was only eligible for continuing care funding for a limited period, was reasonable. Our review concluded that we had misinterpreted her complaint and hadn't been clear about our decision which meant that we had raised the complainant's expectations to the extent that she thought that the Strategic Health Authority was going to do more than we had asked them to do. We offered the complainant £150 which she accepted.
- A complainant was unhappy that his case had repeatedly been transferred to different members of staff within PHSO and that he had not been updated satisfactorily, including a period of five months without receiving a letter. He said that he felt that the onus had been on him to contact PHSO. We upheld his complaint and offered him £100 which he accepted.

- A complainant said that our investigation report into her upheld complaint had calculated incorrectly the transport costs that an NHS Trust should pay to her by way of compensation, leaving her short of £670. We upheld the complaint about us and, because of the time that had elapsed since we concluded the investigation, decided, exceptionally, to pay the shortfall ourselves. We offered the complainant £723.60 (comprising the actual costs plus an interest payment) which she accepted.
- A complainant was unhappy that we had declined to investigate his complaint about the content of HM Courts Service’s leaflets, which he believed had misled him into believing he would only incur moderate costs if his claim failed to reach the small claims court. The review decision concluded that we had been correct to say that we could not overturn the order for costs made against him but that we had not made a sound conclusion about whether there was any evidence of maladministration arising out of HMCS’s leaflets. The outcome of the review was for the decision to decline to be overturned and the case investigated.
- A complainant said that an investigation report contained a perverse finding in that our clinical advice contained some criticism of the Healthcare Commission but we did not uphold the complaint. The review decision identified that we had sought wrongly to answer the substantive complaint in the body of the investigation report (rather than investigating the Commission’s handling only) and that those substantive findings could not be sustained from the evidence in the report. The outcome of the review was for the investigation to be reopened and considered afresh with the focus of the initial reinvestigation being solely on the Commission’s handling.

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 [link] (**PHSO policy requirements**).

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

### Drafting review decisions

4.2.25 Reviewers must also prepare a draft response to the complaint about us. Each letter will be tailored to take account of the particular circumstances of the case. Please refer to ‘Writing decision letters and reports’ [link] However, draft review letters must contain the following additional information (**PHSO policy requirements**):

- A clear statement of what the outcome of the complaint about us 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 If it is not appropriate to respond in our decision letter to each point raised by the complainant, then we will explain why.

4.2.27 Content superseded.

### **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

### **'Do not acknowledge' cases**

4.2.32 The decision to apply a new 'do not acknowledge' instruction can only be made by the Ombudsman, Chief Operating Officer, Interim Director of Operations or Interim Director of Business Development (**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.

## **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 partly 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, partly 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 partly 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 [\[link\]](#)).
  - **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 [link]) 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).