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**From:** <  
**Sent:** 01 September 2016 14:56  
**To:**  
**Subject:** The Health Service Ombudsman Investigation concerning Barking, Havering and Redbridge Hospitals NHS Trust [102534]  
**Attachments:** Bar Council Standard Contractual Terms.pdf; MATRIX-Client Info Leaflet.pdf

Dear

Thank you for your instructions in the above matter. These have been recorded on Matrix' case management system under reference 102534. would be pleased to draft the advice in advance of a meeting and would propose he sends the advice on Thursday 15 September with the meeting on Friday 16<sup>th</sup>, if that is workable for you?

**Fees**

's usual hourly rate is £275 plus vat.

**Terms**

Chris [and indeed all members of Matrix] accepts instructions under the *Bar Council's new Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012* [copy attached]. Please let me know if you would prefer to agree alternative terms; if we do not hear to the contrary we will assume these terms are acceptable and agreed. Unless otherwise agreed, the Bar Council terms will apply to any subsequent counsel instructed on this case at Matrix, we will of course consult you before any subsequent counsel is instructed.

**Service Standards**

The members and staff at Matrix are committed to excellence in all areas of service, [you can find information about our service standards on our web site](#). Additionally we are also required by the Bar Standards Board to ensure that all lay clients are informed that they may complain directly to chambers without going through solicitors and their right to complain to the Legal Ombudsman. To assist with this process we have provided the attached Client Information Leaflet which you may forward to them, please confirm that you will pass on this information.

If there is any difficulty, or you would prefer not to, please can you provide us with the lay client's contact details to enable us to write to them directly.

Thank you for instructing Matrix in this matter.

Kind regards,

**Matrix Chambers**

Griffin Building Gray's Inn London WC1R 5LN

t: +44 (0)20 f: +44 (0)20

[matrixlaw.co.uk](http://matrixlaw.co.uk) [matrixlawinternational.com](http://matrixlawinternational.com)

**Geneva Office:** [matrixlawinternational.com/geneva](http://matrixlawinternational.com/geneva)

 @matrixchambers @matrixlawint

# Client Information Leaflet

## About Matrix Chambers

Matrix Chambers is a set of barristers chambers in London. Your solicitor has engaged a barrister at Matrix on your behalf to help with your case. Our work for you may involve giving advice, writing legal documents, or representing you in a court, tribunal or meeting. Your barrister will work closely with your solicitor but it may be that there is no need for you to meet with your barrister.

## Feedback and complaints

We value all feedback. Please do let us know, at any time, what you think. If anything is wrong, we would always want to know and to put it right. Please tell us, or your solicitor, straight away.

If you wanted to make a complaint about Matrix or the service you can speak to your solicitor, Matrix or directly to the Legal Ombudsman. If you would like to speak to us then contact Lindsay Scott, the Chief Executive of Matrix (Tel: +44 (0)20 7404 3447) or you can find out more about our complaints process from our web site at [www.matrixlaw.co.uk](http://www.matrixlaw.co.uk).

You can complain directly to the Legal Ombudsman. Please note that the Legal Ombudsman has time limits in which a complaint must be raised with them. The time limits are:

- a) Six years from the date of the act/omission;
- b) Three years from the date that the complainant should reasonably have known there were grounds for complaint (if the act/omission took place before the 6 October 2010 or was more than six years ago);

c) Within six months of the complaint receiving a final response from their lawyer, if that response complies with the requirements in rule 4.4 of the Scheme Rules (which requires the response to include prominently an explanation that the Legal Ombudsman was available if the complainant remained dissatisfied and the provision of full contact details for the Ombudsman and a warning complaint must be referred to them within six months).

You can write to them at:

Complaints Team, Legal Ombudsman, PO Box 6806, Wolverhampton WV1 9WJ

Tel: +44 (0)300 555 0333

Email: [enquiries@legalombudsman.org.uk](mailto:enquiries@legalombudsman.org.uk)

Website: [www.legalombudsman.org.uk](http://www.legalombudsman.org.uk)

## More information

You can find out more about your barrister and chambers at [www.matrixlaw.co.uk](http://www.matrixlaw.co.uk).

You can find out more about how barristers work generally, and read the barristers code of conduct on the Bar Standards Board's website at [www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk).

**THE (NEW) STANDARD CONTRACTUAL TERMS FOR THE SUPPLY OF  
LEGAL SERVICES BY BARRISTERS TO AUTHORISED PERSONS  
2012 –  
ANNEXE T TO THE BAR CODE OF CONDUCT**

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**STANDARD CONDITIONS OF CONTRACT FOR THE SUPPLY OF LEGAL SERVICES BY BARRISTERS TO  
AUTHORISED PERSONS 2012**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In these Conditions of Contract for the Supply of Services by Barristers to Authorised Persons (as defined below) ("the Conditions"):
- 1.1.1 reference to a clause is to the relevant clause of these Conditions;
- 1.1.2 headings are included for convenience only and do not affect the interpretation of these Conditions;
- 1.1.3 references to "parties" or a "party" are references to the parties or a party to the Agreement;
- 1.1.4 references to the masculine include the feminine and references to the singular include the plural and vice versa in each case;
- 1.1.5 references to a person include bodies corporate (including limited liability partnerships) and partnerships, in each case whether or not having a separate legal personality, except where the context requires otherwise;
- 1.1.6 references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.1.7 references to any provision of the Code include references to that provision as amended, replaced or renumbered from time to time; and
- 1.1.8 references to a person or body include references to its successor.
- 1.2 In these Conditions, the following words have the following meanings, except where the context requires otherwise:-

"the Agreement"

the agreement between the Barrister and the Authorised Person for the Barrister to provide the Services on the terms set out in these Conditions;

"the Authorised Person"

the person who is an authorised person for the purposes of s. 18(1)(a) of the Legal Services Act 2007 and whose approved regulator under that Act is the Law Society and/or the SRA, and all successors and assignees;

"the Barrister"

the barrister, practising as a member of the Bar of England & Wales, who is willing and able in that capacity to provide the Services in connection with the Case and in accordance with the Instructions from the Authorised Person on behalf of the Lay Client;

"the Case"

the particular legal dispute or matter, whether contentious or non-contentious, in respect of which the Barrister is Instructed to provide the Services;

“the Code”

the Code of Conduct of the Bar of England and Wales, as amended from time to time;

“Conditional Fee Agreement”

the meaning ascribed to those words by section 58 of the Courts and Legal Services Act 1990;

“the Instructions”

the briefs, instructions and requests for work to be done (and all accompanying materials) given by the Authorised Person to the Barrister in whatever manner to enable him to supply the Services, and “Instruct” and “Instructing” shall have corresponding meanings;

“Invoice”

includes a fee note not amounting to a VAT invoice

“the Law Society”

the Law Society of England and Wales

“the Lay Client”

the person for whose benefit or on behalf of whom the Barrister is Instructed by the Authorised Person to provide the Services (who may be the Authorised Person where the Case concerns the affairs of the Authorised Person )

“the Services”

the legal services provided by the Barrister in connection with the Case pursuant to the Instructions provided by the Authorised Person;

“the SRA”

the Solicitors Regulation Authority; and

“the SRA Code”

the part of the SRA Handbook published by the SRA on 16 September 2011 referred to as the “SRA Code of Conduct 2011” as amended from time to time.

## **2. APPLICATION OF THESE CONDITIONS**

- 2.1 The Barrister provides the Services requested by the Authorised Person on the terms set out in these Conditions and subject to his professional obligations under the Code.
- 2.2 These Conditions (other than this clause 2.2) may be varied if, but only if, expressly agreed by the Parties in writing (including by exchange of emails).
- 2.3 By instructing the Barrister to provide further Services in relation to the Case, the Authorised Person accepts these Conditions in relation to those further Services, as well as in relation to the Services which the Barrister is initially instructed to provide.
- 2.4 These Conditions do not apply in the following circumstances:

- 2.4.1 the Barrister is paid directly (a) by the Legal Services Commission, through the Community Legal Service or the Criminal Defence Service or (b) by the Crown Prosecution Service; or
- 2.4.2 the Barrister has entered into a Conditional Fee Agreement in relation to the Case that does not specifically incorporate these Conditions.
- 2.5 Nothing in these Conditions nor any variation referred to in clause 2.2 shall operate so as to conflict with the Barrister's duty under the Code or with the Authorised Person's duty under the SRA Code.

### **3. THE INSTRUCTIONS TO THE BARRISTER**

- 3.1 The Authorised Person must ensure the Instructions delivered to the Barrister are adequate to supply him with the information and documents reasonably required and in reasonably sufficient time for him to provide the Services requested.
- 3.2 The Authorised Person must respond promptly to any requests for further information or instructions made by the Barrister.
- 3.3 The Authorised Person must inform the Barrister immediately if there is reason to believe that any information or document provided to the Barrister is not true and accurate.
- 3.4 Where the Authorised Person requires the Barrister to perform all or any part of the Services urgently the Authorised Person must ensure that:
  - 3.4.1 all relevant Instructions are clearly marked "Urgent"; and
  - 3.4.2 at the time the Instructions are delivered the Barrister is informed in clear and unambiguous terms of the timescale within which the Services are required and the reason for the urgency.
- 3.5 The Authorised Person must inform the Barrister within a reasonable time if the Case is settled or otherwise concluded.

### **4. RECEIPT AND ACCEPTANCE OF THE INSTRUCTIONS**

- 4.1 Upon receipt of the Instructions, the Barrister will within a reasonable time review the Instructions and inform the Authorised Person whether or not he accepts the Instructions.
- 4.2 The Barrister may accept or refuse the Instructions in the circumstances and for the reasons set out in the Code and the Barrister incurs no liability if he refuses any Instructions in accordance with the Code.
- 4.3 Notwithstanding acceptance of Instructions in accordance with Clause 4.1 above, the Barrister shall be entitled to carry out any customer due diligence required by the Money Laundering Regulations 2007. The Authorised Person will provide the Barrister with all reasonable assistance to carry out any necessary customer due diligence including (if required to do so) consenting to the Barrister relying upon the Authorised Person under Regulation 17 of the Money Laundering Regulations 2007.

- 4.4 In the event that the Barrister reasonably considers that the requirements of the Money Laundering Regulations have not been satisfied he may within a reasonable period after receipt of the Instructions withdraw any acceptance of those Instructions without incurring any liability
- 4.5 Subject to the preceding provisions of this Clause 4, the Agreement comes into effect upon the Barrister accepting the Instructions.

## **5. CONFIDENTIAL INFORMATION AND PUBLICITY**

- 5.1 The Barrister will keep confidential all information provided to him in connection with the Case unless:
- 5.1.1 he is authorised by the Authorised Person or the Lay Client to disclose it;
- 5.1.2 the information is in or comes into the public domain without any breach of confidentiality on the part of the Barrister; or
- 5.1.3 he is required or permitted to disclose it by law, or by any regulatory or fiscal authorities, in which case, to the extent that he is permitted to do so, he will endeavour to give the Authorised Person and/or the Lay Client as much advance notice as possible and permitted of any such required disclosure.
- 5.2 The Barrister owes the same duty of confidentiality to other lay clients, and will therefore not disclose or make use of any information that might be given to him in confidence in relation to any other matter without the consent of his other lay client, even if it is material to providing the Services.
- 5.3 Unless the Authorised Person expressly informs the Barrister to the contrary in advance in writing, the Barrister may allow the Instructions to be reviewed by another barrister or by a pupil (including a vacation pupil or mini-pupil) in chambers, on terms that that other barrister or pupil complies with clause 5.1.
- 5.4 Subject to his obligation under clause 5.1, the Barrister may make and retain copies of the Instructions and any written material produced by him.
- 5.5 To the extent such information is already in the public domain, the Barrister may disclose in his marketing and similar materials, and to prospective clients and publishers of legal directories that he is or has been instructed by the Authorised Person and/or for the Lay Client and the nature of the Case. To the extent any such information is not already in the public domain, the Barrister may only refer to it for marketing purposes in a form which sufficiently preserves the Lay Client's privilege and confidentiality and (where the law so requires) with the Lay Client's consent.

## **6. ELECTRONIC COMMUNICATION**

- 6.1 Unless otherwise directed by the Authorised Person, the Barrister may correspond by means of electronic mail, the parties agreeing hereby:
- 6.1.1 to accept the risks of using electronic mail, including but not limited to the risks of viruses, interception and unauthorised access; and

- 6.1.2 to use commercially reasonable procedures to maintain security of electronic mail and to check for commonly known viruses in information sent and received electronically.

## **7. DATA PROTECTION**

- 7.1 The Barrister is a data controller for the purposes of the Data Protection Act and is bound by the Act amongst other things, to take appropriate technical and organisational measures against unauthorised processing of personal data and against accidental loss or destruction of, or damage to, personal data. He is entitled to process (which includes obtaining, consulting, holding, using and disclosing) personal data of the Lay Client, the Authorised Person and others to enable him to provide the Services, to liaise with the Authorised Person in respect of the Lay Client's case or on the Lay Client's behalf, to maintain and update client records, to produce management data, to prevent crime, to publicise his activities as set out in clause 5.5 above, to comply with regulatory requirements and as permitted or required by law. The Lay Client and the Authorised Person each have a right of access and a right of correction in respect of their personal data which the Barrister holds about them, in accordance with data protection legislation.

## **8. PROVIDING THE SERVICES**

- 8.1 The Barrister will exercise reasonable skill and care in providing the Services. The Barrister acknowledges the existence of a duty of care owed to the Lay Client at common law, subject to his professional obligations to the Court and under the Code.
- 8.2 The Barrister will provide the Services by such date as may be agreed between the parties, and in any event will do so within a reasonable time having regard to the nature of the Instructions and his other pre-existing professional obligations as referred to in paragraph 701 of the Code.
- 8.3 The Barrister may delegate the provision of any part of the Services but will remain responsible for the acts, omissions, defaults or negligence of any delegate as if they were the acts, omissions, defaults or negligence of the Barrister.
- 8.4 The Barrister will, in addition, provide all information reasonably required to enable the Lay Client and/or Authorised Person to assess what costs have been incurred and to obtain and enforce any order or agreement to pay costs against any third party.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 All copyright and other intellectual property rights of whatever nature in or attaching to the Barrister's work product, including all documents, reports, written advice or other materials provided by the Barrister to the Authorised Person or the Lay Client belong to and remain with the Barrister. The Authorised Person and the Lay Client have the right and licence to use the Barrister's work product for the particular Case and the particular purpose for which it is prepared. If the Authorised Person or the Lay Client wishes to use copies of the Barrister's work product for purposes other than those for which it is



prepared, this will require the express written permission of the Barrister. The moral rights of the Barrister in respect of his work product are asserted.

## **10. LIABILITY**

- 10.1 Subject to Clause 10.2 below, the Barrister is not liable:
  - 10.1.1 For any loss or damage, however suffered, by any person other than the Lay Client;
  - 10.1.2 for any loss or damage, however suffered, which is caused by inaccurate, incomplete or late Instructions;
  - 10.1.3 for any indirect or consequential loss however suffered.
- 10.2 Nothing in Clause 10.1 shall operate so as to exclude liability where such exclusion is prohibited by law.

## **11. FEES**

- 11.1 The fee for the Services shall in all cases comply with paragraph 405 of the Code and will be calculated as agreed between the Barrister (or his clerk on his behalf) and the Authorised Person, whether prospectively or retrospectively.
- 11.2 The Barrister may agree to provide the Services for a fixed fee or may agree to provide the Services on the basis of an agreed hourly rate or on such other basis as may from time to time be agreed. If an hourly rate is agreed:
  - 11.2.1 the agreed hourly rate will be subject to reasonable periodic review by the Barrister, and in addition may be reviewed by the Barrister to reflect any reasonably significant changes in his status or seniority;
  - 11.2.2 any variation of the agreed hourly rate and the date on which it shall take effect shall be agreed with the Authorised Person, and in default of agreement the Barrister shall be entitled to treat the Agreement as having been terminated by the Authorised Person, subject to the Barrister's obligations under paragraph 610 of the Code.
- 11.3 If no fee or hourly rate is agreed, then the Barrister is entitled to charge a reasonable fee for the Services having regard to all relevant circumstances.
- 11.4 The fee for the Barrister's Services is exclusive of any applicable Value Added Tax (or any tax of a similar nature), which shall be added to the fee at the appropriate rate.

## **12. BILLING, PAYMENT AND INTEREST**

- 12.1 The Barrister shall be entitled to deliver an Invoice to the Authorised Person in respect of the Services or any completed part thereof and any disbursements at any time after supplying the Services or the relevant part thereof.
- 12.2 The Barrister shall deliver an Invoice to the Authorised Person in respect of the Services or any part thereof and any disbursements as soon as reasonably practicable after and not more than 3 months from the earliest of: (a) a request by the Authorised Person; (b)

notification by the Authorised Person that the Case has settled or otherwise concluded; or  
(c) termination of the Agreement.

- 12.3 The Invoice must set out an itemised description of:
  - 12.3.1 the Services provided by the Barrister and the fees charged;
  - 12.3.2 any disbursements incurred and the cost thereof; and
  - 12.3.3 VAT (or any tax of a similar nature), if any.
- 12.4 The Authorised Person must pay the Invoice within 30 days of delivery, time being of the essence, whether or not the Authorised Person has been put in funds by the Lay Client. The Invoice must be paid without any set-off (whether by reason of a complaint made or dispute with the Barrister or otherwise), and without any deduction or withholding on account of any taxes or other charges.
- 12.5 Where the Barrister has delivered a fee note, on request by the Authorised Person the Barrister will deliver a VAT invoice following receipt of payment.
- 12.6 If the Invoice remains outstanding more than 30 days from the date of delivery, the Barrister is entitled:
  - 12.6.1 to the fixed sum and interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;
  - 12.6.2 to sue the Authorised Person for payment; and
  - 12.6.3 subject to the Barrister's obligations to the Court and under paragraph 610 of the Code, to refrain from doing any further work on the Case unless payment for that further work is made in advance.

## **13. TERMINATION**

- 13.1 The Authorised Person may terminate the Agreement by giving notice to the Barrister in writing at any time.
- 13.2 The Agreement will terminate automatically as soon as the Barrister is under an obligation pursuant to Part VI of the Code or otherwise to withdraw from the Case or to cease to act and has complied with any requirements of the Code in so doing.
- 13.3 The Barrister may terminate the Agreement by written notice when he is entitled pursuant to Paragraphs 608 to 610 of the Code or otherwise to withdraw from the Case or cease to act and has complied with any requirements of the Code in so doing.
- 13.4 For the avoidance of doubt, termination of the Agreement, whether under this clause 13 or otherwise, does not affect or prejudice any accrued liabilities, rights or remedies of the parties under the Agreement.

## **14. WAIVER**

- 14.1 Except where expressly stated, nothing done or not done by the Barrister or the Authorised Person constitutes a waiver of that party's rights under the Agreement.

## **15. SEVERABILITY**

- 15.1 If any provision of these Conditions is found by a competent court or administrative body of competent jurisdiction to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the other provisions of these Conditions which will remain in full force and effect.
- 15.2 If any provision of these Conditions is found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such deletions as may be necessary to make it valid and enforceable.

## **16. EXCLUSION OF RIGHTS OF THIRD PARTIES**

- 16.1 This Agreement governs the rights and obligations of the Barrister and the Authorised Person towards each other and confers no benefit upon any third party (including the Lay Client). The ability of third parties to enforce any rights under the Contracts (Rights of Third Parties) Act 1999 is hereby excluded.

## **17. ENTIRE AGREEMENT**

- 17.1 Subject to clauses 2.2 and 11.1, the Agreement, incorporating these Conditions, comprises the entire agreement between the parties to the exclusion of all other terms and conditions and prior or collateral agreements, negotiations, notices of intention and representations and the parties agree that they have not been induced to enter into the Agreement on the basis of any representation.

## **18. NOTICES AND DELIVERY**

- 18.1 Any notice or other written communication to be given or delivered under this Agreement may be despatched in hard copy or in electronic form (including fax and email) and shall in the case of a notice to be given to the Barrister be given to him at his last known Chambers' address, fax number or email address and shall in the case of a notice to be given to the Authorised Person be given to him at his last known place of business, fax number or email address.
- 18.2 Notices and other written communications under this Agreement shall be deemed to have been received:-
  - 18.2.1 In the case of hard copy documents despatched by first class post, on the second working day next following the day of posting;
  - 18.2.2 In the case of documents despatched by second class post, on the fourth working day next following the day of posting;
  - 18.2.3 In the case of documents in electronic form, on the working day next following the date of despatch.

## **19. GOVERNING LAW, JURISDICTION AND DISPUTE RESOLUTION**

- 19.1 The Agreement and these Conditions shall be governed by and construed in accordance with the law of England and Wales.
- 19.2 Unless any alternative dispute resolution procedure is agreed between the parties, the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales in respect of any dispute which arises out of or under this Agreement.<sup>†</sup>
- 19.3 Without prejudice to Clause 19.2, the parties may agree to alternative methods of dispute resolution, including submission of any dispute regarding fees to the Voluntary Joint Tribunal on Barristers' Fees where the Authorised Person is a solicitor.<sup>†</sup>

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<sup>†</sup> The parties are reminded that if a judgment or a Voluntary Joint Tribunal's award is not fully paid within 30 days, the Barrister may request the Chairman of the General Council of the Bar to include the solicitor on the List of Defaulting Solicitors.

---

**From:**  
**Sent:** 02 September 2016 10:32  
**To:** '  
**Cc:**  
**Subject:** RE: The Health Service Ombudsman Investigation concerning Barking, Havering and Redbridge Hospitals NHS Trust [102534]

Hello

Can we make a provisional timing of 1pm to hold the con at chambers? That will give us a chance to read the draft Advice that morning.

Regards

---

**From:** [mailto:  
**Sent:** 01 September 2016 15:07  
**To:**  
**Subject:** RE: The Health Service Ombudsman Investigation concerning Barking, Havering and Redbridge Hospitals NHS Trust [102534]

Dear

Many thanks. I have added the meeting to diary for 16 September and will await confirmation of the time.

Kind regards,

---

**From:** <mailto:> [ombudsman.org.uk](http://ombudsman.org.uk)  
**Sent:** 01 September 2016 15:02  
**To:** Mellor <  
**Cc:** O'Connell Patrick  
**Subject:** RE: The Health Service Ombudsman Investigation concerning Barking, Havering and Redbridge Hospitals NHS Trust [102534]

Hello

Yes, that course of action sounds ideal and we agree the fee and terms.

We have a few staff this side who will be attending the con, so will get back to you to suggest a time for 16 September.

Regards

---

**From:** [mailto:  
**Sent:** 01 September 2016 14:56  
**To:**  
**Subject:** The Health Service Ombudsman Investigation concerning Barking, Havering and Redbridge Hospitals NHS Trust [102534]

Dear

Thank you for your instructions in the above matter. These have been recorded on Matrix' case management system under reference 102534. would be pleased to draft the advice in advance of a meeting and would propose he sends the advice on Thursday 15 September with the meeting on Friday 16<sup>th</sup>, if that is workable for you?

#### Fees

's usual hourly rate is £275 plus vat.

#### Terms

Chris [and indeed all members of Matrix] accepts instructions under the *Bar Council's new Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2012* [copy attached]. Please let me know if you would prefer to agree alternative terms; if we do not hear to the contrary we will assume these terms are acceptable and agreed. Unless otherwise agreed, the Bar Council terms will apply to any subsequent counsel instructed on this case at Matrix, we will of course consult you before any subsequent counsel is instructed.

#### Service Standards

The members and staff at Matrix are committed to excellence in all areas of service, [you can find information about our service standards on our web site](#). Additionally we are also required by the Bar Standards Board to ensure that all lay clients are informed that they may complain directly to chambers without going through solicitors and their right to complain to the Legal Ombudsman. To assist with this process we have provided the attached Client Information Leaflet which you may forward to them, please confirm that you will pass on this information.

If there is any difficulty, or you would prefer not to, please can you provide us with the lay client's contact details to enable us to write to them directly.

Thank you for instructing Matrix in this matter.

Kind regards,

**Mellor**

Assistant Practice Manager

#### Matrix Chambers

Griffin Building Gray's Inn London WC1R 5LN

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f: +44 (0)20

[matrixlaw.co.uk](http://matrixlaw.co.uk) [matrixlawinternational.com](http://matrixlawinternational.com)

**Geneva Office:** [matrixlawinternational.com/geneva](http://matrixlawinternational.com/geneva)



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chambers international

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**From:**  
**Sent:** 11 October 2016 14:55  
**To:**  
**Cc:**  
**Subject:** Follow up re HS-240036  
**Attachments:** doc

This message has been classified as **Sensitive**.

Good afternoon

I am meeting Bill Kirkup during the morning of 3 November to discuss next steps for this case. I'd like, if possible, to also discuss the likelihood of being able to withdraw the first report with him then so he can address that issue at a meeting with the family during the afternoon of 3 November.

I'm on leave next week. Would you be able to meet me at some point after then and before 3 November to talk about the issues raised in the briefing note I sent?

Best wishes

**Investigations Manager**  
Parliamentary and Health Service Ombudsman

W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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[Click here to find out more](#)

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**From:**  
**Sent:** 06 October 2016 19:07  
**To:**  
**Subject:** HS-240036

This message has been classified as **Sensitive**.

and

I'm grateful for your advice to date on this case.

Further to recent discussion, attached is a briefing paper setting out

- a chronology of activity since our investigation report was issued, including the communication we have had with other organisations about it

- the findings of review of the first investigation
- evidence indicating the current investigation was begun as a 're-investigation', meaning the original case was re-opened
- the scope of the current investigation (which has already been agreed by Bill Kirkup)

I have also set out my proposal to consider the current investigation as a reinvestigation (re-opening of the original investigation), albeit with a broader scope than the first investigation. I'd be grateful to meet with you to discuss your views, the relevance of functus officio in these circumstances, and whether/how the first investigation report can be withdrawn (I suspect not for a reinvestigation). Please can you let me know your availability?

Best wishes

**Investigations Manager**  
Parliamentary and Health Service Ombudsman

W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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[Click here to find out more](#)

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**From:** Hawksbee Adam  
**Sent:** 16 November 2016 13:41  
**To:**  
**Cc:** Marsh Rebecca; Campbell Amanda;  
ombudsman.org.uk; Mellor Julie;  
**Subject:** Urgent Briefing Commission - Recommendation re Functus Officio  
**Attachments:** 2016-11-16 Briefing Commission - Functus Officio AH.DOCX

This message has been classified as **Sensitive**.

Hi

As discussed, please find attached a briefing commission regarding the legal advice received by the PHSO on our powers to re-open investigations. As mentioned, we have booked in a meeting on 29/11 and I would be grateful if we could have the necessary information and a recommendation on next steps by COP on 28/11 at the latest.

To confirm, we discussed on the phone whether it was necessary to introduce a short-term urgent change in policy until we make a decision about the impact of the legal advice on policy. You outlined that given the legal ambiguity on this issue, it was safe for us to continue with our current approach, albeit with a caveat that we should exercise caution and continue to ensure our decisions to re-open investigations are robust.

Very happy to discuss if you need further info, or if the timescales set out are going to be challenging.

Best,

Adam

**Adam Hawksbee**  
**Chief of Staff**  
Parliamentary and Health Service Ombudsman  
T: 0300  
M:  
E:  
W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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**SENSITIVE**  
**Briefing Commission**

<b>Commissioner:</b> The Ombudsman	<b>SRO:</b>	(RO –
<b>Date of request:</b> 16/11	<b>Date required:</b> 25/11	<b>Date of meeting:</b> w/c 28/11
<b>Purpose of information:</b> Decision regarding PHSO scope to re-open investigations		
<b>Business plan aim:</b> 5		
<b>Content required:</b>  Earlier today in a discussion on a specific case it came to the Ombudsman's attention that we have received legal advice that calls into question our ability to re-open investigations, which has been a regular practice at PHSO when our review criteria has been met.  A meeting has been booked w/c 28/11 with the Ombudsman, CEO & Deputy Ombudsman, Exec Director O&I, and Legal Director to consider the impact of this advice and make a decision on whether we need to change our policy in order to reflect it.  Briefing for this meeting will therefore need to include: <ul style="list-style-type: none"><li>- Context in which legal advice was sought</li><li>- The advice from Counsel on our power to re-open investigations</li><li>- Any live cases where this specific issue has become an area of concern</li><li>- Assurance that following the receipt of this legal advice, we have examined past practice and are satisfied that we have acted lawfully (and if not, what action we need to take to report/remedy this issue)</li><li>- A clear recommendation from the legal team as to whether we need to change our current policy around our review function and re-opening investigations in light of this new information</li></ul>		

---

**From:** Hawksbee Adam  
**Sent:** 17 November 2016 11:03  
**To:**  
**Cc:** Campbell Amanda  
**Subject:** RE: Urgent Briefing Commission - Recommendation re Functus Officio

This message has been classified as **Sensitive**.

Morning

Thanks for your note, and really sorry to have disturbed you with this while you're on study leave. Would be good to pick this up on Monday.

Just as a heads up for context - one of the concerns Julie had was that neither the briefing materials nor the discussion on Tuesday mentioned the advice that had come from the QC on I'll also confess, that given it wasn't mentioned I'd assumed that the decision to discontinue was independent of the advice we received regarding re-opening investigations and was wholly focussed on the challenges around agreeing a scope.

Julie is concerned that in the \_\_\_\_\_ and \_\_\_\_\_ cases we may be making wider policy decisions regarding our powers to re-open on an ad-hoc basis. I know from the discussions we had around the meeting with Counsel that this firmly is not the intention, but she needs assurance as Ombudsman about whether we need to change our policies to reflect legal advice before making decisions on cases, as opposed to the other way around.

Very happy to discuss further on Monday - shall I book some time in for me, you and

Best,

Adam

**Adam Hawksbee**  
**Chief of Staff**  
Parliamentary and Health Service Ombudsman  
T: 0300  
M:  
E:  
W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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**From:**  
**Sent:** 17 November 2016 10:30  
**To:** Hawksbee Adam  
**Cc:** Marsh Rebecca; Campbell Amanda; [ombudsman.org.uk](http://ombudsman.org.uk); Mellor Julie;  
**Subject:** RE: Urgent Briefing Commission - Recommendation re Functus Officio

This message has been classified as **Sensitive**.

Hello all

Please place a hold on this activity until I return from study leave.

Our plan as agreed at the conference with Counsel in September was to ensure we had finalised advice but not until further activity took place on the case. A meeting took place with Adam and Julie on Tuesday and Kate/myself are taking forward further action.

there is other activity taking place on that will affect the final decision and on which we will need Counsel's advice, so please hold off from going back to Counsel until I am back. The risk faced with this current request is that we set up silo working in parallel activity that will increase overall cost and resource.

Regards

---

**From:**

**Sent:** 16 November 2016 14:03

**To:** Hawksbee Adam

**Cc:** Marsh Rebecca; Campbell Amanda; [ombudsman.org.uk](http://ombudsman.org.uk); Mellor Julie;

**Subject:** RE: Urgent Briefing Commission - Recommendation re Functus Officio

This message has been classified as **Sensitive**.

Thanks, Adam.

Yes we will pick this one up.

Currently it is just and myself at the moment so I will draw down on assistance from (who has previously provided us with assistance in considering this issue) to expedite.

Re the current position for completeness yes you are correct that I suggested maintaining the status quo at this juncture. There are two legal camps here and I very much understand the desire we have to remain able to deal with issues a pragmatically as we possibly can whilst operating within legal parameters.

and I will thrash this out between us with a view to devising a balanced overview of the competing arguments in play and a firm and informed recommendation. It is at that stage that we can decide whether our service needs to change process etc.

I am awaiting confirmation on Chris' availability so please bear this in mind.

Kind regards

*/ Assistant Legal Adviser*  
*Parliamentary and Health Service Ombudsman*  
*Millbank Tower, 21-24 Millbank, London SW1P 4QP*  
*T: 0300 - F: 0300*  
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---

**From:** Hawksbee Adam

**Sent:** 16 November 2016 13:41

**To:**

**Cc:** Marsh Rebecca; Campbell Amanda; [ombudsman.org.uk](http://ombudsman.org.uk); Mellor Julie;

**Subject:** Urgent Briefing Commission - Recommendation re Functus Officio

This message has been classified as **Sensitive**.

Hi

As discussed, please find attached a briefing commission regarding the legal advice received by the PHSO on our powers to re-open investigations. As mentioned, we have booked in a meeting on 29/11 and I would be grateful if we could have the necessary information and a recommendation on next steps by COP on 28/11 at the latest.

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Very happy to discuss if you need further info, or if the timescales set out are going to be challenging.

Best,

Adam

**Adam Hawksbee**

**Chief of Staff**

Parliamentary and Health Service Ombudsman

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**From:** Campbell Amanda  
**Sent:** 18 November 2016 08:43  
**To:**  
**Cc:** Hawksbee Adam  
**Subject:** FW: Urgent Briefing Commission - Recommendation re Functus Officio

This message has been classified as **Sensitive**.

o/r

We will need to put in place a system where legal advice commissioned from external sources, and the results of that advice, is logged. We can then ensure that the full implications of such commissioning and advice are understood throughout the organisation (especially the Ombudsman and myself).

Can you please consider how this can quickly be put in place?

Thank you.

Regards

Amanda

---

**From:** Mellor Julie  
**Sent:** 18 November 2016 08:29  
**To:** Campbell Amanda  
**Cc:** Hawksbee Adam  
**Subject:** Re: Urgent Briefing Commission - Recommendation re Functus Officio

Amanda

I wanted to bring your attention to the need to keep the ombudsman informed of legal developments following a recent case where I queried the legal advice received. Hopefully the email chain illuminates.

I think this is an example of the need for a RASCI (who is responsible, accountable, supporting, needs consulting and to be kept informed) for any work.

I found out about the latest legal advice on 'functus officio' when querying legal advice on a case on which, as Ombudsman, I was being asked to make a decision. The advice contradicted our long term approach to reopening cases post review and was, in part, influenced by new advice on this topic about which I knew nothing. Given the decisions I make I need to be kept informed of such developments and, of course, consulted when you do the work to develop our policy for the future.

I raise this now because after 5 years I am familiar with most of the legal issues and risks we manage in case work and so felt equipped to ask for more information about the advice received. My successor is unlikely to be so familiar with the issues and so the importance of keeping them informed of developments so they can take account of it in their case decisions will be even more vital.

Julie

Sent from my iPad

On 17 Nov 2016, at 10:29,

[ombudsman.org.uk](mailto:ombudsman.org.uk)> wrote:

This message has been classified as **Sensitive**.

Hello all

Please place a hold on this activity until I return from study leave.

Our plan as agreed at the conference with Counsel in September was to ensure we had finalised advice but not until further activity took place on the case. A meeting took place with Adam and Julie on Tuesday and Kate/myself are taking forward further action.

there is other activity taking place on that will affect the final decision and on which we will need Counsel's advice, so please hold off from going back to Counsel until I am back. The risk faced with this current request is that we set up silo working in parallel activity that will increase overall cost and resource.

Regards

---

**From:**

**Sent:** 16 November 2016 14:03

**To:** Hawksbee Adam

**Cc:** Marsh Rebecca; Campbell Amanda; [ombudsman.org.uk](mailto:ombudsman.org.uk);

Mellor Julie;

**Subject:** RE: Urgent Briefing Commission - Recommendation re Functus Officio

This message has been classified as **Sensitive**.

Thanks, Adam.

Yes we will pick this one up.

Currently it is just and myself at the moment so I will draw down on assistance from (who has previously provided us with assistance in considering this issue) to expedite.

Re the current position for completeness yes you are correct that I suggested maintaining the status quo at this juncture. There are two legal camps here and I very much understand the desire we have to remain able to deal with issues a pragmatically as we possibly can whilst operating within legal parameters.

Chris and I will thrash this out between us with a view to devising a balanced overview of the competing arguments in play and a firm and informed recommendation. It is at that stage that we can decide whether our service needs to change process etc.

I am awaiting confirmation on Chris' availability so please bear this in mind.

Kind regards

*/ Assistant Legal Adviser  
Parliamentary and Health Service Ombudsman*

Millbank Tower, 21-24 Millbank, London SW1P 4QP

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**From:** Hawksbee Adam  
**Sent:** 16 November 2016 13:41  
**To:**  
**Cc:** Marsh Rebecca; Campbell Amanda; [ombudsman.org.uk](http://ombudsman.org.uk);  
Mellor Julie;  
**Subject:** Urgent Briefing Commission - Recommendation re Functus Officio

This message has been classified as **Sensitive**.

Hi

As discussed, please find attached a briefing commission regarding the legal advice received by the PHSO on our powers to re-open investigations. As mentioned, we have booked in a meeting on 29/11 and I would be grateful if we could have the necessary information and a recommendation on next steps by COP on 28/11 at the latest.

To confirm, we discussed on the phone whether it was necessary to introduce a short-term urgent change in policy until we make a decision about the impact of the legal advice on policy. You outlined that given the legal ambiguity on this issue, it was safe for us to continue with our current approach, albeit with a caveat that we should exercise caution and continue to ensure our decisions to re-open investigations are robust.

Very happy to discuss if you need further info, or if the timescales set out are going to be challenging.

Best,

Adam

Adam Hawksbee  
Chief of Staff  
Parliamentary and Health Service Ombudsman  
T: 0300  
M:  
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**From:**  
**Sent:** 28 November 2016 14:36  
**To:** Hawksbee Adam  
**Cc:**  
**Subject:** RE: Meeting tomorrow

This message has been classified as **Sensitive**.

Thanks for this, Adam.

I remain happy to discuss but I'm conscious that this issue is in the spotlight in the case which is picking up and which we thought may resolve this issue either way.

Its not clear to me whether it has or not but I don't wish to intrude on work that is already advising on.

In the circumstances might it be sensible for us to review (couldn't help use it) next week and take it from there?

Kind regards

*/ Assistant Legal Adviser  
Parliamentary and Health Service Ombudsman  
Millbank Tower, 21-24 Millbank, London SW1P 4QP  
T: 0300 - F: 0300  
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**From:** Hawksbee Adam  
**Sent:** 28 November 2016 13:30  
**To:**  
**Cc:**  
**Subject:** RE: Meeting tomorrow

This message has been classified as **Sensitive**.

Hi

Julie still needs assurance on whether we need to take any action in light of the advice we received on our power to re-open investigations, in line with the questions outlined in the briefing commission from 16/11 (attached).

highlighted that she hadn't been invited to the meeting organised tomorrow, which was an oversight from my office. Given the constraints on your team at the moment, and the fact that you've outlined that our current approach is legally safe, I'm happy to delay the discussion to a more suitable time. Equally, if you think this issue doesn't warrant a meeting at this time and you can provide assurance in writing that we don't need to take any action based on the advice, then I'm happy for this to be a written submission as opposed to a meeting.

Will take you steer on next steps.

Best,

Adam

**Adam Hawksbee**  
**Chief of Staff**  
Parliamentary and Health Service Ombudsman  
T: 0300  
M:  
E:  
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---

**From:**  
**Sent:** 28 November 2016 13:14  
**To:** Hawksbee Adam  
**Subject:** Meeting tomorrow

Hello Adam

Is the meeting tomorrow still required?

Kind regards

*/ Assistant Legal Adviser*  
*Parliamentary and Health Service Ombudsman*  
*Millbank Tower, 21-24 Millbank, London SW1P 4QP*  
*T: 0300 - F: 0300*  
*E: [ombudsman.org.uk](http://ombudsman.org.uk)*  
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---

**From:** Marsh Rebecca  
**Sent:** 16 February 2017 19:06  
**To:**  
**Subject:** Re: Amanda/ Rebecca - Re-Opening Investigations

That's fine let's do that  
Thanks

Regards

Rebecca

On 16 Feb 2017, at 18:57, [ombudsman.org.uk](mailto:ombudsman.org.uk)> wrote:

This message has been classified as **Sensitive**.

Hello Rebecca

I've been working on the Court of Appeal case today, and have a second JR hard deadline to meet tomorrow that has been delayed by PO and Data issues this week. I will be able to work on a combined draft for re-opening around 4pm tomorrow – are you free for a call then?

Regards

---

**From:** Marsh Rebecca  
**Sent:** 16 February 2017 12:28  
**To:**  
**Subject:** Fwd: Amanda/ Rebecca - Re-Opening Investigations

Hi

This now gives us time

Can we please have a telephone conversation in the morning and sort this and do a combined draft for tomorrow pm?

Thanks

Regards  
Rebecca

Begin forwarded message:

**From:** Hawksbee Adam <  
**Date:** 16 February 2017 at 12:22:29 GMT  
**To:** [ombudsman.org.uk](mailto:ombudsman.org.uk)>, Marsh Rebecca  
<[Rebecca.Marsh@ombudsman.org.uk](mailto:Rebecca.Marsh@ombudsman.org.uk)>  
**Cc:** [@ombudsman.org.uk](mailto:@ombudsman.org.uk)>,  
<[ombudsman.org.uk](mailto:ombudsman.org.uk)>  
**Subject:** RE: Amanda/ Rebecca - Re-Opening Investigations

This message has been classified as **Sensitive**.

Hi both,

Given this meeting has been pushed back to late on Tuesday, and given everything else going on, I'm happy for the paper deadline to be pushed back to COP tomorrow.

Best,  
Adam

**Adam Hawksbee**

**Chief of Staff**

Parliamentary and Health Service Ombudsman

T: 0300

M:

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W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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**From:**

**Sent:** 16 February 2017 11:09

**To:** ; Marsh Rebecca

**Cc:** Hawksbee Adam;

**Subject:** RE: Amanda/ Rebecca - Re-Opening Investigations

Yes, fine with me

---

**From:**

**Sent:** 16 February 2017 11:06

**To:** Marsh Rebecca

**Cc:** Hawksbee Adam;

**Subject:** RE: Amanda/ Rebecca - Re-Opening Investigations

**Importance:** High

Apologies – I have been notified that this meeting must take place early next week.

Would the 21<sup>st</sup> from 4pm onwards suit?

Dial in facilities can be set up.

**Assistant Private Secretary to the CEO**

Parliamentary and Health Service Ombudsman

T: 0300

E: [ombudsman.org.uk](mailto:ombudsman.org.uk)

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**From:**

**Sent:** 16 February 2017 11:01

**To:** ; Marsh Rebecca

**Cc:** Hawksbee Adam

**Subject:** RE: Amanda/ Rebecca - Re-Opening Investigations

Yes, fine with me

---

**From:**

**Sent:** 16 February 2017 10:56

**To:** Marsh Rebecca

**Cc:** Hawksbee Adam

**Subject:** Amanda/ Rebecca - Re-Opening Investigations

**Importance:** High

Dear both

I am trying to find the nearest date to reschedule this meeting. Would the 28<sup>th</sup> February anytime between 10.30 and 1pm work for you?

Thank you

**Assistant Private Secretary to the CEO**

Parliamentary and Health Service Ombudsman

T: 0300

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**From:**

**Sent:** 13 February 2017 18:20

**To:**

**Subject:** RE: Julie Mellor/ Amanda Campbell Forward Planner - Request for Papers/Briefings - 16th Feb till 24th Feb

Hello

No problem meeting the deadline but the meeting time for me with Amanda that is provisionally set for Monday will need to change because I am in an Employment Tribunal directions hearing. Rebecca Marsh is also attending that meeting. May I suggest we move this to Tuesday onwards please?

Regards

---

**From:**

**Sent:** 13 February 2017 17:12

**To:**

Marsh Rebecca;

**Cc:**

**Subject:** Julie Mellor/ Amanda Campbell Forward Planner - Request for Papers/Briefings - 16th Feb till 24th Feb

Good afternoon

Please find attached 2 separate documents detailing Julie and Amanda's diaries this week for your information, and as a gentle reminder to submit the requested briefings/papers by **1pm this Thursday** to . If there is a problem with meeting the deadline – you will need to let us know by COP tomorrow please.

If Julie and Amanda are attending the same meetings – we will highlight this in orange.

We will be circulating these documents every Monday afternoon, please do feel free to cascade it to colleagues as necessary and let us know if anyone else should be added onto the distribution list.

Thank you

**Assistant Private Secretary to the CEO**

Parliamentary and Health Service Ombudsman

T: 0300

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**From:** Hawksbee Adam  
**Sent:** 20 February 2017 09:19  
**To:** Marsh Rebecca; Campbell Amanda  
**Cc:**  
**Subject:** RE: Amanda/ Rebecca - Re-Opening Investigations  
**Attachments:** 20170220 Re-Opening Investigations.docx

This message has been classified as **Sensitive**.

Morning all,

The paper for tomorrow's meeting on this issue has now been received, and is attached.

- Could you please print a copy for Amanda?

Best,

Adam

**Adam Hawksbee**  
**Chief of Staff**  
Parliamentary and Health Service Ombudsman  
T: 0300  
M:  
E:  
W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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**From:** Hawksbee Adam  
**Sent:** 16 February 2017 12:22  
**To:** Marsh Rebecca  
**Cc:** ;  
**Subject:** RE: Amanda/ Rebecca - Re-Opening Investigations

This message has been classified as **Sensitive**.

Hi both,

Given this meeting has been pushed back to late on Tuesday, and given everything else going on, I'm happy for the paper deadline to be pushed back to COP tomorrow.

Best,

Adam

**Adam Hawksbee**  
**Chief of Staff**  
Parliamentary and Health Service Ombudsman

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**From:**  
**Sent:** 16 February 2017 11:09  
**To:** Marsh Rebecca  
**Cc:** Hawksbee Adam;  
**Subject:** RE: Amanda/ Rebecca - Re-Opening Investigations

Yes, fine with me

---

**From:**  
**Sent:** 16 February 2017 11:06  
**To:** Marsh Rebecca  
**Cc:** Hawksbee Adam;  
**Subject:** RE: Amanda/ Rebecca - Re-Opening Investigations  
**Importance:** High

Apologies - I have been notified that this meeting must take place early next week.  
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Assistant Private Secretary to the CEO  
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**From:**  
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**Cc:** Hawksbee Adam  
**Subject:** RE: Amanda/ Rebecca - Re-Opening Investigations

Yes, fine with me

---

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**Sent:** 16 February 2017 10:56  
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**Cc:** Hawksbee Adam  
**Subject:** Amanda/ Rebecca - Re-Opening Investigations  
**Importance:** High

Dear both

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Thank you

Assistant Private Secretary to the CEO  
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Regards

---

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Thank you



**Assistant Private Secretary to the CEO**  
**Parliamentary and Health Service Ombudsman**  
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**From:** Medlock Andrew  
**Sent:** 22 February 2017 09:03  
**To:**  
**Cc:** Hawksbee Adam; Marsh Rebecca; Campbell Amanda;  
**Subject:** Re: Review Meeting - 21/02/17

Hello,

That sounds sensible, although I have one eye on the fact that we do currently have a clutch of review cases that are likely to propose a new investigation (following the movement of work from the corporate casework team to customer care).

It's also likely to be the case that any new criteria etc. would take some time to come to fruition in terms of design authority and how it is presented externally.

As such, I should be able to draft something in the interim that sets out what Amanda asked for regarding what we would want to say and do if (following the existing criteria) we believe a new investigation/assessment is warranted. I can share that with you to see if it is going in the right direction.

Regards  
Andrew

On 21 Feb 2017, at 17:49, <[ombudsman.org.uk](mailto:ombudsman.org.uk)> wrote:

This message has been classified as **Sensitive**.

Thanks all

March is a busy month for Court hearings with 4 JR cases listed over a fortnight, and other corporate matters requiring legal input, so 2 March is not impossible, but will be a challenge. As such, may I propose a revised action list:

May I suggest Andy and myself do the following by 24 March (when the Court hearings are all over):

- draft criteria to determine whether material error exists at both public law decision stages (decision not to investigate; issue of final report), using draft advice;
- identify what material or templates may need to be changed as a result
- work with the Design Authority team to project plan the changes needed, staff communication and training, liaison communication, implementation and audit
- circulate the project plan to you for information

Before then, and as soon as Andy has information, we can work out how to mitigate the particular case mentioned in the meeting- my knowledge is very limited.

Regards

---

**From:** Hawksbee Adam  
**Sent:** 21 February 2017 17:28  
**To:** Marsh Rebecca; Medlock Andrew;  
**Cc:** Campbell Amanda;  
**Subject:** Review Meeting - 21/02/17

Hi all,

A very quick note summarising where we ended up following today's discussion.

Given the legal advice, we are going to take steps to make our current approach safer and in keeping with advice from counsel. We will construct new letters on this issue for complainants and bodies in jurisdiction that make clear the basis on which we are conducting a new investigation, in instances where we have new evidence or have not effectively followed our process.

**Andy/** - Can you please provide a draft of this letter by midday on 2/03?

We also agreed that to decrease the number of review requests (and hopefully) reviews, we would:

- a) Phrase the review criteria in a more user-friendly way
- b) Use the criteria at draft report stage when we ask for comments

**Andy** - Would you be able to take this forward and share a re-draft of the letter template?

There was a further action to consider what we do in instances where individuals ask us to withdraw our reports.

**Andy** - To consider as a less urgent priority what we do in these circumstances

- This case is currently with Andy's team, and is being considered following receipt of further clinical advice.

**Andy** - To take forward with and consider appropriate next steps that are legally safe and communicated in a timely fashion to the complainants family

Best,

Adam

**Adam Hawksbee**

**Chief of Staff**

Parliamentary and Health Service Ombudsman

T: [0300](tel:0300)

M:

E:

W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

Sent from my iPad

---

**From:** Medlock Andrew  
**Sent:** 23 February 2017 10:50  
**To:**  
**Cc:** ; Marsh Rebecca;  
**Subject:** RE: Request for info - URGENT  
**Attachments:** Review Guidance 1.0 20141016.docx; Delegation Scheme from 2016-11-10 - signed by JM.pdf

This message has been classified as **Sensitive**.

Hi

You will need to check these via (particularly answer for Q. number 1), but here are my starters for ten on this (in red below):

Question 1 is the key thing here. I have added the bit about us considering a review request (that is eventually upheld) as a 'fresh' complaint under s.3(1) etc. as that is what has issued to the MPS on a recent case ( That correlates with what the courts said in an old JR case (Dyer) - who said we cannot re-open but can consider a fresh referral of a complaint under s.3(1) etc.

Yet knows more, and there is a case that, because we have a well established review stage, this should be seen an integral element of the overall investigation process. If so, then it could be the case that it falls under the wide discretion the Ombudsman has (under s.11(3) etc.) to conduct an investigation 'as she considers appropriate'. That would then link to the fact the Ombudsman refers to 're-opening' powers within the Delegation Scheme.

Yet I'm not sure if that can be argued in that way - and it's really for to decide.

- anything to add?

Regards  
Andrew

---

**From:**  
**Sent:** 21 February 2017 18:14  
**To:** [@ombudsman.org.uk](mailto:@ombudsman.org.uk); [ombudsman.org.uk](mailto:ombudsman.org.uk)  
**Cc:**  
**Subject:** Request for info - URGENT  
**Importance:** High

This message has been classified as **Sensitive**.

Good evening Customer Care Team and Casework Team

We have received the following request for information:

Please can you provide any or all internal documents which;

1. show what the Ombudsman's powers currently are to re-open or start a new investigation into a complaint that has already been investigated.

[NB: will need to see/approve/complete this]

*Under the s.3(1) of HSC Act (s.5(1) of the PCA Act), the Ombudsman has the authority to commence an investigation upon receipt of a complaint (or referral of a complaint from an MP for complaints received under the PCA Act). In addition, under s.11(3) of the HSC Act (s.7(2) of the PCA Act), the Ombudsman has the authority to conduct an investigation as she considers appropriate.*

*As such, the Ombudsman has a wide discretion to carry out her work. In order to do that, the Office has, over time, developed procedures that sets out how the Ombudsman will conduct and complete investigations. This includes the procedure whereby the Ombudsman will look at any concerns a party has about how the Ombudsman conducted the investigation, and the investigation decision itself. We currently call this our 'review' process.*

*As a key Principle of Good Administration and Remedy, we would expect any public body to put matters right as soon as possible if it is clear that mistakes have occurred. This is an important principle for the Ombudsman's work too.*

*As explained below, we would look at whether the concerns raised meet set criteria. If they do, and the outcome is that we believe this means that the investigation decision is unsound, we would carry out new work on the complaint. This would be done on the basis that the concerns raised by the parties are, in effect, to be considered as receipt of a fresh complaint as described under s.3(1) of the HSC Act (s.5(1) of the PCA Act).*

*NOTE TO                      This is our current position, as per Dyer, but it might be argued that our review process is actually part of our 'conduct of an investigation' process and falls under s.11(3) and so we have a wide discretion to carry out a fresh investigation if the review criteria is met.                      will advise.*

2. give guidelines as to the criteria which would currently need to be met for it to be decided 'that a procedural requirement was not followed'

*Our review process is currently under review as we have recently completed some structural changes and all review work is now carried out by our Customer Care team. Our existing guidance [see attached] sets out that, in order for us to consider that an investigation decision is unsound, we would need to see that one (or more) of the following has occurred:*

- *Did we make our decision based on evidence that contained facts that were not accurate and which could change our decision;*
- *Has the complainant provided new and relevant information that was not previously available and which might change our decision; or*
- *Did we overlook or misunderstand parts of the complaint or not take account of relevant information, which could change our decision.*

*If one or more of this criteria is met, a reviewer (with no prior connection to the case) would examine the issues in more detail. This would include consideration of "what happened" and "what should have happened", which would involve consideration of whether the Investigation followed our Service Model procedural requirements. Whilst important, the main focus for our review process is to establish whether there is clear evidence that one of the above criteria has occurred in the investigation, and which clearly shows that our decision may well be different had what happened not occurred.*

4. show at what level the decision would currently be taken that the criteria had been met for opening or starting a new investigation into a complaint that had already been investigated.

*Our Delegation Scheme [see attached, but I have pasted the relevant bit below] sets out the relevant authority level for such decisions in line with the Ombudsman general discretion to conduct investigations (please note the Delegation Scheme is also subject to review following structural changes):*

- **The power to reopen investigations I delegate to the Managing Director, Deputy Ombudsman and the Executive Director of Operations and Investigations.**

5. Also any current guidelines as to how such a re-opened or new investigation would be conducted including time scales, what level of staff would oversee these etc.

*Our existing guidance sets out that any additional work required on an investigation (following an upheld review) will be treated as a new investigation - and so the normal processes for carrying out an investigation would apply. However, such cases would be allocated to a new investigator as a priority. The Investigator would then contact the parties to discuss the potential scope of the investigation and obtain comments as per our normal process. At this stage, the investigator would also discuss with the parties what timescales are appropriate bearing in mind the specific circumstances of the case.*

*Our guidance notes that any further investigation would be treated as a priority and its risk rating would be set to 'High'. That would mean that oversight of progression of such investigations would occur at Assistant Director or Director level, and approval of the eventual investigation decision would occur at Director or Executive Director level (or above). Again, this would be subject to the particular planning for the investigation in line with the circumstances of the case.*

6. explain under what powers the Ombudsman can currently implement proposed provisions ahead of their being accepted by Parliament by means of proposed bill.

I plan to refer the requester to the service model guidance but please let me know if you have any specific information to provide, particularly for questions 3, 4 and 5.

The response to this request is due by 2 March and needs time for senior sign-off, so please get back to me by close of business on **Thursday 23 Feb.**

Kind regards

**Legal Assistant**  
Parliamentary and Health Service Ombudsman  
T: 0300  
E:  
W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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**From:**  
**Sent:** 24 February 2017 16:48  
**To:**  
**Subject:** FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation  
**Attachments:** 0006Analysisanddraftresponse-V2.doc; Review Guidance 1.0 20141016.docx; Delegation Scheme from 2016-11-10 - signed by JM.PDF; 2017-02-15 PHSO's response to PACAC's follow-up questions from the annua....pdf

This message has been classified as **Sensitive**.

Good afternoon

You would have seen the email from Andrew Medlock outlining the proposed answers to this FOI. I have used that information to form the basis of the draft response. The draft response and the two attachments he sent for release are **attached** for your consideration. Please let me know if you have any comments. I will then get this to Rebecca and Amanda for sign-off.

I have also **attached** the information from Philipp Mende regarding PACAC that you have asked for. I see that it contains a table of the number of review request - is this the information you were referring to digging out? Would you like this document or the table to be included in the response?

The final response is due to go out on **Thursday 2 March**. Please let me know if you have any questions or require anything further.

Kind regards

**Legal Assistant**  
Parliamentary and Health Service Ombudsman  
T: 0300  
E:  
W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

---

**From:**  
**Sent:** 15 February 2017 19:59  
**To:**  
**Cc:** Marsh Rebecca; Hawksbee Adam  
**Subject:** RE: FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation

This message has been classified as **Sensitive**.

Hello

Agree with approach at this stage. The draft response will need to be shared with Rebecca Marsh (copied in) and approved possibly by CEO (so Adam also copied in)

Service Model attached [Review Guidance 1.0 20141016](#) This shows the process and criteria by which complainants can make a request for a review. This was introduced in October 2014 and has not been changed or amended since. The challenge is that once accepted for review, there is no process or guidance for how reviews are handled. Andy Medlock's team undertook a review of Customer Care late 2016 and could not find any "up to date" guidance on how reviews are handled.

Can you dig out the FOI request on the number of reviews and include that as part of the consideration? Can you also check with Philipp what response has gone to PACAC on the question they have raised on review?

Regards

---

**From:**

**Sent:** 15 February 2017 15:51

**To:**

**Subject:** FW: FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation

This message has been classified as **Sensitive**.

Hi all

Please see the request below which shines a light towards the *functus officio* issue. I was hoping to draw on some of your expertise on how to respond here.

So far, my thinking for the response will be a high level: Ombudsman's powers are derived from the Acts, outline the review criteria and service model guidance etc then perhaps a more in-depth explanation to respond to questions 4 and 5 possibly from CCT or OCWT.

I feel a bit stuck with this one, so please do let me know if you have any thoughts about how best to respond.

Also, should I be drawing this request to the attention of anyone/seeking sign off from another team?

Thanks

**Legal Assistant**

Parliamentary and Health Service Ombudsman

-----Original Message-----

From: phsothefacts Pressure Group [<mailto:request-387095-0552ee5c@whatdotheyknow.com>]

Sent: 02 February 2017 19:36

To: InformationRights

Subject: FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation

Dear Parliamentary and Health Service Ombudsman,

Please can you provide any or all internal documents which;

1. show what the Ombudsman's powers currently are to re-open or start a new investigation into a complaint that has already been investigated.



3. give guidelines as to the criteria which would currently need to be met for it to be decided 'that a procedural requirement was not followed'
4. show at what level the decision would currently be taken that the criteria had been met for opening or starting a new investigation into a complaint that had already been investigated.
5. Also any current guidelines as to how such a re-opened or new investigation would be conducted including time scales, what level of staff would oversee these etc.
6. explain under what powers the Ombudsman can currently implement proposed provisions ahead of their being accepted by Parliament by means of proposed bill.

Yours faithfully,

Della Reynolds

phsothefacts Pressure Group

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Please use this email address for all replies to this request:  
request-387095-xxxxxxx@xxxxxxxxxxxxxxx.xxx

Is [informationrights@ombudsman.org.uk](mailto:informationrights@ombudsman.org.uk) the wrong address for Freedom of Information requests to Parliamentary and Health Service Ombudsman? If so, please contact us using this form:  
[https://www.whatdotheyknow.com/change\\_request/new?body=parliamentary\\_and\\_health\\_service\\_ombudsman](https://www.whatdotheyknow.com/change_request/new?body=parliamentary_and_health_service_ombudsman)

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<https://www.whatdotheyknow.com/help/ico-guidance-for-authorities>

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.

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FDN-274362

History Item Number 0006

### Analysis of information request

<b>Basic details</b>			
Requester's name:	Ms Della Reynolds		
Date request received:	20 working day target: 24 February 2017	40 day target if applicable:	
VF ref of linked cases: <i>Including previous FDC/FDN refs</i>			
<b>Who is making the request?</b>			
Della Reynolds: PHSO the facts group			
<b>What information is being sought?</b>			
<p>"Please can you provide any or all internal documents which;</p> <ol style="list-style-type: none"><li>1. show what the Ombudsman's powers currently are to re-open or start a new investigation into a complaint that has already been investigated.</li><li>3. give guidelines as to the criteria which would currently need to be met for it to be decided 'that a procedural requirement was not followed'</li><li>4. show at what level the decision would currently be taken that the criteria had been met for opening or starting a new investigation into a complaint that had already been investigated.</li><li>5. Also any current guidelines as to how such a re-opened or new investigation would be conducted including time scales, what level of staff would oversee these etc.</li><li>6. explain under what powers the Ombudsman can currently implement proposed provisions ahead of their being accepted by Parliament by means of proposed bill."</li></ol>			
<b>Placing the request in context</b>			
<b>Do we hold the information sought and if so, where?</b>			
<b>Should we release the information sought?</b>			
<b>Any other action taken</b>			
Risk Assessment	Low		

Method of delivery: By return email to WDTK address
Name:
Date:

*Draft response*

Dear Ms Reynolds

**Your information request: FDN-274358**

I write in response to your email of 2 February 2017, in which you requested information held by the Parliamentary and Health Service Ombudsman (PHSO) the following terms:

"Please can you provide any or all internal documents which;

1. show what the Ombudsman's powers currently are to re-open or start a new investigation into a complaint that has already been investigated.

3. give guidelines as to the criteria which would currently need to be met for it to be decided 'that a procedural requirement was not followed'

4. show at what level the decision would currently be taken that the criteria had been met for opening or starting a new investigation into a complaint that had already been investigated.

5. Also any current guidelines as to how such a re-opened or new investigation would be conducted including time scales, what level of staff would oversee these etc.

6. explain under what powers the Ombudsman can currently implement proposed provisions ahead of their being accepted by Parliament by means of proposed bill."

Your request has been considered under the provisions of the Freedom of Information Act 2000 (FOIA). Please find the **enclosed** documents and information in response to your request below.

#### *1. Ombudsman's powers*

The Ombudsman's powers are derived from the Parliamentary Commissioners Act 1967 (PCA) and the Health Service Commissioners Act 1993 (HSCA) (the Acts). The Acts are publically available on the Ombudsman's website here:

<https://www.ombudsman.org.uk/about-us/who-we-are/legislation>

Under section 5 of the PCA and section 3 of the HSCA, the Ombudsman has the authority to commence an investigation upon receipt of a complaint (or referral of a complaint from an MP for complaints received under the PCA Act). In addition, under section 7(2) of the PCA and section 11(3) of the HSCA, the Ombudsman has the authority to conduct an investigation as she considers appropriate.

As such, the Ombudsman has a wide discretion to carry out her work. In order to do that, the Office has, over time, developed procedures that sets out how the Ombudsman will conduct and complete investigations. This includes the procedure whereby the Ombudsman will look at any concerns a party has about how the Ombudsman conducted the investigation, and the investigation decision itself. We currently call this our 'review' process.

As a key Principle of Good Administration and Remedy, we would expect any public body to put matters right as soon as possible if it is clear that mistakes have occurred. This is an important principle for the Ombudsman's work too.

As explained below, we would look at whether the concerns raised meet set criteria. If they do, and the outcome is that we believe this means that the investigation decision is unsound, we would carry out new work on the complaint. This would be done on the basis that the concerns raised by the parties are, in effect, to be considered as receipt of a fresh complaint as described under section 5(1) of the PCA and section 3(1) of the HSCA.

## *2. Criteria for decision that 'procedural requirement was not followed'*

Our review process is currently under review as we have recently completed some structural changes and all review work is now carried out by our Customer Care team. Our existing guidance (**attached**) sets out that, in order for us to consider that an investigation decision is unsound, we would need to see that one (or more) of the following has occurred:

- Did we make our decision based on evidence that contained facts that were not accurate and which could change our decision;
- Has the complainant provided new and relevant information that was not previously available and which might change our decision; or
- Did we overlook or misunderstand parts of the complaint or not take account of relevant information, which could change our decision.

If one or more of these criteria is met, a reviewer (with no prior connection to the case) would examine the issues in more detail. This would include consideration of "what happened" and "what should have happened", which would involve consideration of whether the Investigation followed our Service Model procedural requirements. Whilst important, the main focus for our review process is to establish whether there is clear evidence that one of the above criteria has occurred in the investigation, and which clearly shows that our decision may well be different had what happened not occurred.

## *3. What level would the decision to re-open or start a new investigation be made?*

The Ombudsman's Delegation Scheme (**attached**) sets out the relevant authority level for such decisions in line with the Ombudsman's general discretion to conduct investigations. Under the Delegation Scheme, the Ombudsman delegates her power to re-open an investigation to the Managing Director and Deputy Ombudsman, and to the Executive Director of Operations and Investigations. Please note that the Delegation Scheme is also subject to review following structural changes at the PHSO.

## *4. Guidelines for a re-opened or new investigation*

Our existing guidance (**attached**) sets out that any additional work required on an investigation (following an upheld review) will be treated as a new investigation - and so the normal processes for carrying out an investigation would apply. However, such cases would be allocated to a new investigator as a priority. The Investigator would then contact the parties to discuss the potential scope of the investigation and obtain comments as per our normal process. At this stage, the investigator would also discuss with the parties what timescales are appropriate bearing in mind the specific circumstances of the case.

Our guidance notes that any further investigation would be treated as a priority and its risk rating would be set to 'High'. That would mean that oversight of progression of such investigations would occur at Assistant Director or Director level, and approval of the eventual investigation decision would occur at Director or Executive Director level (or above). Again, this would be subject to the particular planning for the investigation in line with the circumstances of the case.

#### *5. Ombudsman's powers and proposed draft Public Services Ombudsman bill*

As I have outlined above in response to your first questions, the Ombudsman's powers are derived from the Acts currently in force. Information about the powers of the Public Service Ombudsman is outlined in the draft bill which is publically available on the gov.uk website here:

<https://www.gov.uk/government/publications/draft-public-service-ombudsman-bill>

I hope that this information is useful. If you believe there has been an error in the processing of your information request, it is open to you to request an internal review. You can do this by writing to us by post or by email to [informationrights@ombudsman.org.uk](mailto:informationrights@ombudsman.org.uk). You will need to specify what the nature of the issue is and we can consider the matter further. Beyond that, it is open to you to complain to the Information Commissioner's Office ([www.ico.org.uk](http://www.ico.org.uk)).

Yours sincerely

# Review Guidance

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## Introduction - What is a complaint about us?

1. A complaint about us is an expression of dissatisfaction with any type of PHSO decision, our service or our response to a request for information under the Freedom of Information or Data Protection Acts. Our decisions are final and can only be challenged by Judicial Review. However, we recognise that Judicial Review is a technical and expensive process, so in exceptional circumstances the Review Team can carry out a review of our decisions. We will not normally consider complaints where a person simply says that they are unhappy with or disagree with what we have done. Instead we expect the complaint to satisfy the relevant review criteria.
2. If any member of staff is uncertain about whether a contact from a complainant or other party constitutes a complaint about us then the Review Team should be contacted for advice on x4076 or at [complaintsaboutphso@ombudsman.org.uk](mailto:complaintsaboutphso@ombudsman.org.uk).

## Telling complainants about our complaints procedure

3. Complainants should be told of our complaints procedure when they are notified of any decision we have made on their case. When we tell complainants about our complaints procedure, we need to make them aware that they should put their complaint to us within three months of either the decision we have made or the service they are unhappy with. If they are complaining about a decision we have made, they should demonstrate to us within that three months that they have met our criteria for review.
4. Below is an example of the wording we use in our decision letters to tell complainants about our complaints process:

*If you think our decision is wrong, you can request a review. To enable us to review our decision you must provide us with evidence that our decision was based on inaccurate information; or you have new information that was not previously available to us; or we overlooked or misunderstood your complaint. To request a review, you can complete a 'What to do if you think our decision on your complaint is wrong' form, which is available on our website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk). Alternatively, you can contact me for the form. You would need to submit your review request form to us within three months of the date of this letter.*

## Receiving a review request

5. We encourage complainants to complete a 'What to do if you think our decision about your complaint is wrong' form or a 'How to complain about the way we dealt with you' form, depending on the nature of the complaint. The forms can be found on our external website -



<http://www.ombudsman.org.uk> and can also be sent to complainants in hard copy or via email.

6. If there is a reason why the complainant cannot complete the form, for example because of a disability, we can also accept complaints in the following ways:
  - Contacting the caseworker, customer services officer or their manager
  - Calling the 'complaints about us' helpline on 0300 061 4076
  - Emailing us at 'complaintsaboutphso@ombudsman.org.uk'
7. Staff must refer review requests to the Review Team within three working days of receipt.
8. Once the request for review has been received by the Review Team, they will decide whether to accept the complaint for review, whether there is a need to contact the complainant for clarification about the complaint, or whether to decline to carry out a review because the complaint does not meet our review criteria.

## **Deciding whether to review**

### Requests to review our decisions

9. A request to review a decision we have made can be passed to either a Reviewer or a Business Support Officer (BSO) in the Review Team to consider whether we should carry out a review or not. The decision about who to pass the request to will usually be made by the Head of the Review Team.
10. The criteria which the Review Team uses to decide whether or not to carry out a review of a complaint about a decision are:
  - Did we make our decision based on evidence that contained facts that were not accurate and which could change our decision;
  - Has the complainant provided new and relevant information that was not previously available and which might change our decision; or
  - Did we overlook or misunderstand parts of the complaint or not take account of relevant information, which could change our decision.
11. If the Review Team decides that none of the above criteria has been met, then they will decline the review request.
12. The Review Team may decide that further clarification is required from the complainant before a decision can be made about whether or not to carry out the review. If at this stage, the complainant is close to the three month deadline for requesting a review, the Review Team will remind the complainant of the deadline in the clarification letter.

13. The Head of the Review Team has discretion to decide who can sign off a proposal to decline a review request. Usually, if the proposal to decline has been prepared by a Business Service Officer (BSO), this should be agreed by a Reviewer or the Head of the Review Team. Decisions to decline made by a Reviewer can be signed off by the same reviewer.
14. Once the decision to decline the review request has been made, the Review Team will write to the complainant to explain their decision.
15. If the complainant responds to the decision not to carry out a review, the Review Team will acknowledge any further correspondence and decide whether there is anything in the correspondence that would warrant carrying out a review. For example, because the complainant has provided new information that shows they now meet the criteria.
16. If the complainant continues to write to the Review Team but does not provide any information which would warrant accepting the complaint for review, the Review Team will respond by informing the complainant that the issues they are raising are not new. An example of the wording we sometimes use is below. These further responses are usually signed by the Head of the Review Team.

*'We have carefully considered all the information you have provided to us, however, we have reached the view that there is nothing more that we can achieve for you. As such, we are not able to continue engaging in discussion about cases which have already been considered and decided. We must now bring the matter to a close'.*

17. It is also possible that a review request based solely on the provision of further information that was not available at the time the original decision was taken, will not be treated as a review but will be passed to Customer Services or Investigations as a fresh enquiry.

#### Accepting a complaint about our decision for review

18. The Head of the Review Team will usually agree any proposal to accept a complaint for a review. She has discretion to delegate this decision.
19. All accepted reviews are logged on VF. Once a complaint about our decision has been accepted for review, the Review Team will write to the complainant to inform them that their complaint will be reviewed and provide them with an approximate timescale for completion of the review. Our service standard is to resolve 90% of review complaints within 4 months.
20. The Review Team will carry out a risk assessment [assessing risk in casework] of the case to determine how the review should be managed before the case is allocated to a reviewer.

## Complaints about our service

21. Unlike complaints about our decision, there is no review criteria that needs to be met when dealing with service complaints. As such, these will generally be accepted for review. The decision on whether to accept a service complaint is made by the Head of the Review Team. These complaints can relate to any aspect of our service and can relate to anyone involved in the case, not just the original caseworker. Examples of service complaints (this list is not exhaustive) are:
- How we treated the complainant
  - How we communicated with the complainant
  - How long we took to deal with the complaint
22. There is flexibility around how complaints about our service are dealt with. The Review Team have discretion to ask the manager of the staff member who is the subject of the complaint to respond to the complainant. Alternatively, the Review Team can consider the complaint by carrying out a review.

## **Conducting the review**

23. The Reviewer should normally contact the complainant when they start the review to introduce themselves and give the complainant the opportunity to explain their complaint and the reasons for it. Any decision not to contact the complainant should be recorded on VisualFiles to ensure there is an accurate audit trail of the reasons for that decision.
24. The Reviewer should also contact the original caseworker or the staff member about whom a complaint has been made, to tell them they will be carrying out a review. Caseworkers can track the progress of the review on VisualFiles.
25. Reviewers must prepare an analysis of the complaint about us. There is a suggested framework for the analysis (link to Annex A); however the Reviewer can determine the actual format to fit the particular circumstances of the case.

## **Remedy**

26. If a Reviewer is recommending that we uphold or partly uphold a complaint about us then the review analysis should include a proposal about any remedy or redress that PHSO should offer. The remedy or redress proposed should be discussed with the Head of the Review Team to ensure consistency with previous decisions.

## Communicating the decision

27. 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. Draft review letters must contain the following additional information:

- A clear statement of what the outcome of the review 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;
- A clear statement of the learning we have gained from the complaint and how we will take that learning forward (this should be agreed by the Head of the Review Team first);
- An explanation that once the review is completed this is the end of the complaints process and the only way to challenge the decision is by pursuing a Judicial Review (see Completing the Complaints Process (paragraph 40) for example wording);
- If it is not appropriate to respond in our decision letter to each point raised by the complainant, then an explanation about why.

### Complaints that are not upheld

28. For complaints about us that are not upheld, these can be signed off by the individual Reviewer once their proposal has been quality checked by another Reviewer.

### Complaints that are partly or fully upheld

29. The Reviewer will inform the caseworker of the proposal to partly or fully uphold the complaint. The Reviewer may take this opportunity to ask the caseworker about the case.
30. The Head of the Review Team will quality check all decisions and draft responses which propose to partly or fully uphold a complaint, including service complaints. Depending on the case, either the Head of the Review Team, the Ombudsman or the Managing Director will consider and issue the review decision. Annex C contains delegation information [Link to Annex C].

## Learning from Review

31. If the Review Team identifies that we could have done something better, either in the decision we have made or the service we have provided, they should provide a handling lesson/s detailing what learning can be gained.

32. Any handling lessons that are given should be matched to the relevant Review keyword. The Reviewer should identify which team the complaint came from and which team the handling lesson relates to. The current Review keywords can be found at Annex B [link to Annex B].
33. Once the learning has been identified, the Head of the Review Team feeds this back to the relevant caseworker and their manager. This information is also collated into a monthly management report for the Executive Team.

### **Reopening assessments/investigations**

34. If, having carried out the review, the Review Team considers that we got the assessment/investigation decision wrong, then the case may be reopened and the complaint looked at again, either fully or in part.
35. The Reviewer will write to the complainant and the organisation complained about to inform them of the decision to reopen the case.
36. Depending on where the decision was made, the Review Team will send the case file to either the Head of Customer Services or the Allocations Team explaining that it should be allocated as a priority.
37. All cases that are recommended to be reopened should be treated as a priority and the risk level should be raised to high.

### **Opening a new complaint**

38. Having carried out the review, the Review Team may decide that a new case needs to be opened with a new case reference number. For example, if new evidence or further concerns are raised at the review stage. In these cases, we will only look at the new information or concerns, instead of looking at the whole complaint again.
39. If a new case needs to be opened, then the Review Team will liaise with Customer Services or Investigations to facilitate this and a decision will be made, on a case by case basis, as to who will assess/investigate the new case.

### **Completing the complaints process**

40. We will normally inform the complainant in the review decision letter that they have reached the end of our complaints process and the next steps for them would be to seek a Judicial Review. From that point, the Review Team will only accept further communication in writing. An example of the wording used is:

*Our review is now complete, and so we have reached the end of our complaints process. If you want to challenge our decision again, you will only be able to do so by using judicial review proceedings.*

*Judicial review is a form of court proceeding where a judge reviews whether a decision or action made by a public body is lawful. There are time limits for this and you may incur costs. As such, you may want to take legal advice before deciding whether this action is appropriate in your case.*

41. The Review Team will consider any further communication from the complainant to see if it contains new information that would change the decision. If they decide that no new information has been presented, they will write to the complainant telling them so. The following wording should usually be included in that letter:

*'We have carefully considered all the information you have provided to us, however, we have reached the view that there is nothing more that we can achieve for you. As such, we are not able to continue engaging in discussion about cases which have already been considered and decided. We must now bring the matter to a close'.*

42. Once the review has been closed, the Review Team will not accept any further service complaints unless there is a good reason to do so. This decision will be taken by the Head of the Review Team or our Legal Advisor.

### **Joint Working**

43. Any joint decisions made by PHSO and the LGO will be reviewed by a PHSO External Reviewer and agreed and signed out by the relevant Ombudsmen. PHSO's service standards apply.
44. The process for completing a Joint Working review and dealing with post review correspondence follows the same process as non Joint Working cases, except for the following:

### Service complaints

45. Service complaints will be considered by the Head of PHSO's Review Team and she will decide which Ombudsman should respond. If the complaint is about staff conduct, the complaint will be considered in accordance with the complaints procedure of the office that employs that staff member.

### Deciding whether to carry out a review of a complaint about a Joint Working decision

46. Any complaint about a joint working decision will be sent to the Head of PHSO's Review Team to decide whether we have enough information to carry out a review and whether the request meets the criteria.
47. The Head of PHSO's Review Team will share the decision with the relevant person at the LGO.

48. If the complaint is declined for review, the Head of PHSO's review Team will write to the complainant explaining why.

## 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, '*Specific discretion*' and '*out of time*').
- **Case background:**
  - A brief summary of the complaint originally put to PHSO (for example, what bodies were complained about and the main complaints) 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 (sharing draft reports if the complaint was accepted for investigation), 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 has done wrong, how they have been affected 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 so 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;
  - reworking the consideration of comments on a draft investigation report.
- **Recommendation:**
  - This should state clearly the proposed outcome of the review - 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.
- **Handling issues/lessons**
  - The Reviewer should identify any handling issues arising from the complaint. The Reviewer should also identify here whether the case raises any equality and diversity or human rights issues.

## Annex B: Complaint Handling Keywords

Keyword	Handling Lesson
Communication	<ul style="list-style-type: none"><li>• Response not tailored to requested adjustments</li><li>• Communication insensitive/lack of empathy</li><li>• Failure to respond to contact</li><li>• Failed to manage expectations</li><li>• Failed to issue updates</li><li>• Failed to clarify complaint with complainant</li><li>• Other</li></ul>
Decision/Findings	<ul style="list-style-type: none"><li>• Reasons for decision unclear</li><li>• Decision not to investigate flawed</li><li>• Decision/Findings reasonable but lacked robustness</li><li>• Decision/Findings unreasonable</li><li>• Incorrect consideration/application of statutory time limit</li><li>• Other</li></ul>
Delays	<ul style="list-style-type: none"><li>• Unnecessary delays</li><li>• Other</li></ul>
Record keeping/Security	<ul style="list-style-type: none"><li>• Correspondence sent to wrong address</li><li>• Did not follow case file structure</li><li>• Documents filed on incorrect case file</li><li>• Other</li></ul>
Clinical Advice	<ul style="list-style-type: none"><li>• Conflicting advice not resolved</li><li>• Failed to obtain clinical advice</li><li>• Failed to obtain specialist advice</li><li>• Failed to interpret advice correctly</li><li>• Other</li></ul>
Compliance	<ul style="list-style-type: none"><li>• Failed to follow up compliance</li><li>• Other</li></ul>
Errors in reports/letters	<ul style="list-style-type: none"><li>• Factual errors (does not change outcome)</li><li>• Significant factual errors (changed outcome)</li><li>• Typographical error</li><li>• Other</li></ul>
Legislation	<ul style="list-style-type: none"><li>• Failure to act in accordance with legislation</li><li>• Other</li></ul>
Governance	<ul style="list-style-type: none"><li>• Quality Assurance process</li></ul>

	ineffective <ul style="list-style-type: none"> <li>• Failure to escalate appropriately</li> <li>• Other</li> </ul>
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### Annex C: Review Delegation Information

Activity	Review decision and response
Complaint where the Ombudsman signed off the decision complained about	The Ombudsman
Complaint where the Managing Director signed off the decision complained about	The Ombudsman
Complaints that have representation from the Speaker of the House, Leaders of the three main parties, a PASC/HSC member and the chair of the public accounts committee.	The Ombudsman or the Managing Director
Complaints which are considered to be high risk	The Ombudsman or the Managing Director
Complaints about Corporate Resources issues	A relevant Director, Executive Director or Managing Director
Complaints about the service provided by members of the Review Team, including the Head of the Review Team.	Letter from either Head of Review, Legal Adviser or Managing Director to explain that once a review is complete, complaints about service not considered.
All other complaints: <ul style="list-style-type: none"><li>- Where the recommendation is to partly or fully uphold</li><li>- All others</li></ul>	Head of Review Team  Reviewers

## **PROTECT**

### **THIS DELEGATION SCHEME SETS OUT THE ACTIVITIES DELEGATED BY THE OMBUDSMAN AND TO WHOM THEY ARE DELEGATED**

Subject to the exceptions, limitations and requirements set out below and such other exceptions limitations, requirements and directions that I may from time to time impose, by virtue of the power conferred on me by s.3(2) of the Parliamentary Commissioner Act 1967 and para.12 of Schedule 1 to the Health Service Commissioners Act 1993, I make the following delegations for the proper exercise of my powers and functions to apply from 10 November 2016.

#### **I do not delegate the following activities:**

- The power to disclose information for the purposes of proceedings for an offence under the Official Secrets Act or for an offence of perjury alleged to have been committed in the course of an investigation.
- Decisions to lay reports before Parliament.
- The administering of oaths or affirmations (and the examination of witnesses abroad).

#### **The following activity is delegated only to the Chief Executive Officer & Deputy Ombudsman and the Executive Director of Operations and Investigations:**

The signing of all reports or decision letters relating to the investigation or assessment of complaints referred by the Speaker, the Chairman and Members of the Public Administration and Constitutional Affairs Committee, the Chairman of the Health Committee, the Chairman of the Public Accounts Committee and leaders of the parties.

#### **The following activities are delegated to the named posts or grades only:**

- The power to pay expenses or fees to a mediator I delegate to the Chief Executive Officer & Deputy Ombudsman and the Executive Director of Operations and Investigations.
- Decisions to consider or exercise powers in relation to obstruction of an investigation (including the release of information for those purposes) or where documents or other evidence have been required from but not provided by individuals or bodies I delegate to the Chief Executive Officer & Deputy Ombudsman and the Executive Director of Operations and Investigations.
- The power in the 1993 Act to disclose information in the interests of the health and safety of patients I delegate to the Chief Executive Officer & Deputy Ombudsman, the Executive Director of Operations and Investigations, Operations and Investigations Group Directors, and Assistant Directors.
- The power to disclose a copy of a report made under the 1993 Act to any person the Commissioner thinks appropriate I delegate to all Operations Managers and above.
- Decisions to disclose information obtained during the course of an investigation other than for reasons set out in s. 15 of the 1993 Act and s.11 of the 1967 Act I delegate to the Chief Executive Officer & Deputy Ombudsman, the Executive

## PROTECT

Director of Operations and Investigations and Operations and Investigations Group Directors.

- The power to discontinue investigations I delegate to all Operations Managers and above.
- The power to reopen investigations I delegate to the Managing Director & Deputy Ombudsman and the Executive Director of Operations and Investigations.

**The following activities are delegated to the Chief Executive Officer & Deputy Ombudsman, the Executive Director of Operations and Investigations all staff in the Operations and Investigations Group and all staff in the Corporate Casework Team:**

- the power to decide whether or not to carry out investigations;
- the power to carry out investigations;
- the power to make decisions on the outcome of investigations;
- the power to obtain information for those purposes; and
- the power to disclose information obtained during or for the purposes of an investigation for the purposes of the investigation or the report.

“Investigation” includes an investigation carried out jointly with the Parliamentary Ombudsman, the Health Services Ombudsman, the Local Government Ombudsman or the Public Services Ombudsman for Wales.

### Exceptions

#### Business Support Staff

Are only delegated:

- the power to obtain information for the purposes of an investigation; and
- the power to disclose information obtained during or for the purposes of an investigation for the purposes of the investigation or the report.

#### Customer Service Officers

Cannot:

- decline a case for investigation - except when:
  - A body is out of jurisdiction;
  - The complaint concerns public service personnel matters;
  - The complaint is pre-local resolution<sup>1</sup> ;
  - The complaint was not properly made; or
  - The complaint was pre second tier<sup>2</sup>.
- accept a case for investigation in principle or otherwise.
- make decisions about the outcomes of investigations (including discontinuing or reopening an investigation).

---

<sup>1</sup> Pre-local resolution: where the complaint has not yet been made to the body in jurisdiction, or it has been made but the body has not completed its consideration of the complaint AND there is no good reason to accept the complaint prematurely

<sup>2</sup> Pre-second tier: where the complaint has not yet been made to a second tier complaint handler (such as the Adjudicator or the Independent Case Examiner for the Department for Work and Pensions) or it has been made but the second tier complaint handler has not completed its consideration of the complaint AND there is no good reason to accept the complaint prematurely

## PROTECT

- decide whether a person or body is suitable to bring a complaint on behalf of the aggrieved.
- discontinue or reopen an investigation.
- approve or sign draft or final reports of investigations.
- pay fees and allowances to advisers or persons supplying information for the purposes of an investigation.

### Caseworkers (Grade 4)

Cannot:

- accept a complaint for investigation following an “in principle” decision to investigate;
- discontinue or reopen an investigation;
- make decisions about the outcomes of investigations (including discontinuing or reopening an investigation);
- approve or sign draft or final reports of investigations; or
- pay fees and allowances to advisers or persons supplying information for the purposes of an investigation.

### Senior Caseworkers, Investigators, Assistant Casework Managers, Customer Services Managers, Associate Caseworkers and Reviewers including External Reviewers

Cannot:

- accept high risk cases for investigation; or
- make decisions about the outcomes of investigations (including discontinuing or reopening an investigation)

### Operations Managers (Grade 3)

Cannot:

- make decisions about the outcomes of investigations that involve discontinuing, or reopening an investigation on high risk cases.

### The investigators and team leader of the Joint Working team are able to:

- make decisions about the outcomes of investigations (including discontinuing an investigation) with the exception of high risk cases and complaints referred by the Speaker, the Chairman and Members of the Public Administration and Constitutional Affairs Committee, the Chairman of the Health Committee, the Chairman of the Public Accounts Committee and leaders of the parties.

\*

“High risk cases” are defined in PHSO’s risk management policies.

The making of these delegations for the performance of my functions shall not prevent me from exercising those functions.

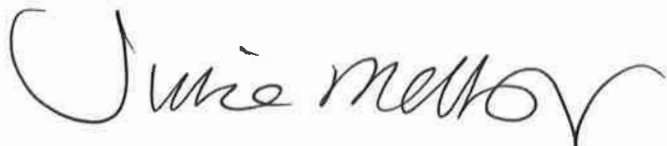
All delegated functions must be exercised in accordance with the PHSO Casework Policy and Guidance and any other general guidance issued to staff.

The delegated functions may be withdrawn by me on a permanent or temporary basis or amended at any time without prior notice.

PROTECT

Notification of any changes to this Scheme of Delegation will be made and circulated in writing

Officers who have been temporarily promoted into any of the posts listed above will take on the delegated authority applicable to the post.

A handwritten signature in black ink, appearing to read 'Julie Mellor', with a large, stylized initial 'J'.

**Dame Julie Mellor DBE**  
**10 November 2016**

PROTECT



Bernard Jenkin MP  
Chair  
Public Administration and Constitutional Affairs Committee  
House of Commons  
London  
SW1A 0AA



15 February 2017

Dear Bernard

## RESPONSE TO THE COMMITTEE'S FOLLOW-UP QUESTIONS

Thank you for your letter from 9 January with your follow-up questions to our annual scrutiny session. As requested, we have shared with the Committee the minutes of our Audit Committee meetings in 2015/16 as well as the audit reviews by our internal auditor, KPMG. The following sets out our response to the Committee's other questions.

### ***Statement regarding our strategy and value for money***

In response to the Committee's question about the effectiveness of our spending, we referred to the National Audit Office (NAO) as saying that ultimately it is the achievement of our strategy that demonstrates value for money. This is the NAO statement to which we referred:

*"Value for money judgements also need to look at spending in context. Whether some of the expenditure we have examined provides value for money can only be answered by comparing the work of the organisation over a period of time. So, for example, the value for money obtained from the Strategic Plan would need to be assessed against the impact the organisation is having compared to its previous performance, to see if the benefits are being realised. For example, in the last year there has been a significant increase in the number of investigations carried out by PHSO."*

You can find this statement in a NAO report about our procurement practices from September 2014. This is available on our [website](#).



INVESTORS  
IN PEOPLE



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### ***Breakdown of savings in 2015/16 and those planned for in 2016/17***

In 2015/16 we made £320,000 accommodation savings from subletting part of our premises in Millbank Tower. This represents 1% of the revenue budget.

2016/17 is the first year of our four year comprehensive spending review, where we have committed to a 24% real term reduction in costs over the four year period. Within our initial Comprehensive Spending Review submission, we said we would save £2.2m in 2016/17. By the time we agreed the 2016/17 budget, this had risen to £3.1m.

The savings we agreed to make are set out in detail in the table below:

Area of savings	Amount in £m
Non-pay savings <i>Including:</i> <i>Travel and subsistence</i> <i>Reducing recruitment costs</i> <i>Improved value for money for contracts (for example cleaning and our staff canteen in Millbank Tower)</i> <i>Reduction in research costs</i> <i>Reduction in publications purchased</i>	0.8
Accommodation savings through sub-letting a floor in Millbank Tower	0.5
Reduction in contingencies (including our contingency for increases in demand)	1.5
Decision not to undertake additional activity to raise awareness of our service	0.1
Small reduction in posts (4)	0.2
<b>Total</b>	<b>3.1</b>

We are on track to achieve these savings in 2016/17.

### ***Explanation of our drawdown of £1.1m in 2015/16***

In 2015/16 a total of £493,000 of early departure costs were due to be paid by 31 March 2016, and it was imperative that we had the cash available to make these payments. However, these payments were not requested by MyCSP (which administers Civil Service Pensions) until April 2016. In addition, we were advised by HM Treasury that the additional £275,000 due through the Statement of Excesses in respect of the overdrawn amount of March 2015 may not be received by 31 March 2016, and that we should request it through the Supplementary Estimates.

On 20 February 2016, when we made our submission to HM Treasury, we still had not received either the cash indicated by the Statement of Excess, or the cash indicated by the Supplementary Estimate. We therefore drew our full cash requirement. The Supplementary Estimate was subsequently received on 18 March and the Statement of Excesses on 23 March 2016. If these costs had been incurred as expected and this subsequent funding had not been received, the closing balance would have been £68,000.

### ***Breakdown of staff who have left PHSO***

The Committee asked for information on the breakdown of staff who have left PHSO organised by how long they worked at PHSO before they left and what type of contract they were on. The following tables provide this information for 2015/16 and 2016/17 (1 April 2016 to 31 January 2017).

In 2015/16, some 109 staff left PHSO; this was made up of 75 permanent staff and 34 fixed term staff. Staff turnover that year was 23.1%. If fixed term contract staff are excluded, the turnover was 17.6%.

2015/2016		
Length of service	Contract type	Total number of staff
Less than 1 year	Fixed-Term	31
	Permanent	4
Between 1 and less than 2 years	Fixed-Term	2
	Permanent	15
Between 2 and less than 3 years	Fixed-Term	1
	Permanent	3
Between 3 and less than 4 years	Permanent	10
Between 4 and less than 5 years	Permanent	2
Between 5 and less than 10 years	Permanent	33
Between 10 and less than 15 years	Permanent	7
Between 15 and less than 20 years	Permanent	0
Between 20 and less than 30 years	Permanent	1
30 years and more	Permanent	0
<b>Total</b>		<b>109</b>

In 2016/17 (1 April 2016 to 31 January 2017), 121 staff left PHSO, including 86 permanent staff and 35 fixed term staff. Of the permanent staff, 36 left via a voluntary exit programme. Staff turnover was 25.9%, if all fixed term contract staff and staff taking voluntary exit are included. If fixed term contract staff are excluded, the turnover was 15.7%.

<b>2016/2017 (1 April 2016 - 31 January 2017)</b>		
<b>Length of service</b>	<b>Contract type</b>	<b>Total number of staff</b>
Less than 1 year	Fixed-Term	27
	Permanent	2
Between 1 and less than 2 years	Fixed-Term	8
	Permanent	7
Between 2 and less than 3 years	Fixed-Term	0
	Permanent	11
Between 3 and less than 4 years	Permanent	1
Between 4 and less than 5 years	Permanent	10
Between 5 and less than 10 years	Permanent	44
Between 10 and less than 15 years	Permanent	7
Between 15 and less than 20 years	Permanent	1
Between 20 and less than 30 years	Permanent	2
30 years and more	Permanent	1
<b>Total</b>		<b>121</b>

### ***Number of requests for review***

Our decisions are final and there is no automatic right to have a review, but we will consider a review if customers can show us that:

- we made our decision based on inaccurate facts that could change our decision; or
- they have new and relevant information that was not previously available and which might change our decision; or
- we overlooked or misunderstood parts of their complaint or did not take account of relevant information, which could change our decision.

A review is essentially a quality check of the process we followed in reaching our decision. If we find that the process was flawed, we will look at what is needed to put this right. If



this shows our decision might be wrong, we would consider how best to proceed. On a few occasions, this has involved us doing a new assessment or investigation.

When we receive a review request, our Customer Care team will seek to speak to the complainant about their review request and about our decision. These conversations allow us to address concerns complainants may have about our decisions, by giving additional explanation or providing reassurance about our process, so that is not always necessary to launch a review. Our Customer Care Team will also always explain what we would need from complainants to launch a review, or why we would not be doing a review, if that is the decision we make. The Customer Care Team will then consider all the information presented to see if our review criteria is met and to decide if we should do a review.

When we were asked during the scrutiny session about our reviews, we provided a figure which described the number of cases that we had *accepted* for review in 2015/16. The table below sets out the number of requests for reviews that we *handled* in 2015/16 - this is the same data that we provided in response to the FOI request you reference in your letter. Not all review requests will meet the criteria for review, and some may be resolved through further explanations or actions without the need for the review. For your information, we have added information on the outcomes of the reviews that we undertook in 2015/16. Please note that sometimes complainants ask for a review on more than one occasion on the same case - the table therefore shows the total number of review requests we handled in 2015/16, rather than the number of decisions about which we received a review request.

Number of review requests in 2015/16			
	Handled	Accepted for review	Fully/Partly Upheld
Intake & Assessment	1,093	56	9
Investigation	876	162	5
<b>Total</b>	<b>1,969</b>	<b>218</b>	<b>14</b>

### ***Measuring and reporting on satisfaction with our Customer Care team***

Following the launch of our Service Charter in summer 2016, we re-designed our Customer Feedback surveys so that they align with our Charter commitments and ensure we get real time feedback on all aspects of our service. Our surveys involve an external company carrying out telephone interviews with a randomly selected number of users, asking for feedback about how we did in line with our Charter.

As part of this, we created a survey specific to users of our Customer Care service, which we launched in December 2016. This will enable us to get regular feedback on how our Customer Care Team are capturing and responding to feedback on a day-to-day basis. Feedback from the Customer Care Survey will be fed into our reporting mechanism for

how we are performing against the Service Charter - as well as being fed back to the Team to ensure we can improve continuously.

In addition, our Customer Care Team regularly receive positive feedback about all aspects of PHSO's service to say where we have made a difference, and they make sure this is fed back to staff and used to define best practice.

### ***Changes in our reporting on stakeholder engagement***

Following our 2014 stakeholder survey, we updated the questions in our 2015 survey to better reflect our work, in particular how we increasingly assist our casework publication process with more active media, policy and public affairs support. This was largely a semantic change in the questions we used, and we updated our reporting on the survey accordingly. The underlying intention, however, has remained unchanged - to share our insight and make recommendations, so that we can drive improvements to service delivery and complaint handling. Our latest 2016 survey builds on this. We have just completed it and plan to publish and share with you the results over the coming months.

### ***How we assess the quality of and compliance with the recommendations we make***

Our recommendations form part of our investigation reports and are subject to the same rigorous quality assurance process as our investigations process. This is set out in our Service Model, and requires all investigation decisions to be approved at manager level. To support investigators and managers making decisions on appropriate recommendations, we have developed a database of recommendations for remedy on previous cases, classified by the nature of the injustice experienced by the complainant.

A dedicated Outcomes & Compliance Caseworker monitors trends in financial remedy and supports caseworkers in making decisions on remedy in cases with complex or serious injustice. All cases involving a recommendation for financial remedy of £1,500 or more are referred to an Assistant Director or above for a final decision on remedy.

We monitor compliance with all the recommendations we make. This means that we remain in contact with the organisation to whom the recommendation was made, and we do not close the case until we are satisfied that agreed remedies have been provided. We do not simply take the organisation's word for it, but ask to see evidence, for example copies of apology letters, or proof of payment of compensation.

For systemic remedies - i.e. where we ask organisations to reflect on their failings and make wider improvements - we ask to see copies of action plans, and will usually assess the plan to determine whether it is likely to prevent a recurrence of the failings identified by our investigation. Where the plan involves clinical matters we may refer it to one of our clinical advisers for their view. We do not currently monitor the implementation or effectiveness of action plans. We make approximately 1,000 systemic recommendations a

year, and it would require considerable additional resource for us to monitor the implementation and effectiveness of each of these plans. Most of our systemic recommendations relate to improvements in NHS operations and such monitoring would overlap with the work of the Care Quality Commission (CQC) as the system regulator. Instead, we ask the organisations concerned to send copies of their action plans (along with a copy of our final report) to the relevant regulator (which for NHS complaints will usually be the CQC). As part of our data sharing agreement with the CQC, the CQC will share any issues relating to compliance regarding action plans and learning with us following the conclusion of inspections of the relevant organisation. In addition we provide CQC with information on complaint handling by providers in advance of each round of inspections they conduct.


We are generally very effective at achieving compliance with our recommendations. Over the past three years we have secured compliance in excess of 99% of all recommended remedies each year, with only a handful of recommendations being closed as not having been complied with each year.

Approximately 65% of our recommendations are secured within the timeframe for compliance set out in our investigation reports. We recognise that there is room for improvement here. However, we have no statutory powers to enforce our recommendations. Compliance is in effect voluntary, and we are reliant on dialogue and persuasion rather than coercion to secure compliance.

Where an NHS organisation fails or refuses to comply, we may share that information with the CQC or the appropriate professional regulator. As you are aware, where non-compliance means that an injustice will not be remedied, we may lay a special report before Parliament. This, however, is a last resort and in the history of our office, there have been only a very small number of occasions where we felt it necessary to do so.

I hope you find this information helpful.

Yours sincerely

A handwritten signature in black ink, reading 'Julie Mellor' in a cursive script.

**Dame Julie Mellor, DBE  
Chair and Ombudsman  
Parliamentary and Health Service Ombudsman**

---

**From:**  
**Sent:** 24 February 2017 07:43  
**To:** Medlock Andrew;  
**Cc:** Marsh Rebecca;  
**Subject:** RE: Request for info - URGENT

This message has been classified as **Sensitive**.

Hi Andrew

This covers everything for me. Nothing to add. Thanks for your help.

Parliamentary and Health Service Ombudsman  
T:

W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

Follow us on



Our Service Charter explains how we work  
[Click here to find out more](#)

[Watch our short animations to find out how we deal with complaints](#)

---

**From:** Medlock Andrew  
**Sent:** 23 February 2017 10:50  
**To:**  
**Cc:** ; Marsh Rebecca;  
**Subject:** RE: Request for info - URGENT

This message has been classified as **Sensitive**.

Hi

You will need to check these via (particularly answer for Q. number 1), but here are my starters for ten on this (in red below):

Question 1 is the key thing here. I have added the bit about us considering a review request (that is eventually upheld) as a 'fresh' complaint under s.3(1) etc. as that is what has issued to the MPS on a recent case ( That correlates with what the courts said in an old JR case (Dyer) - who said we cannot re-open but can consider a fresh referral of a complaint under s.3(1) etc.

Yet knows more, and there is a case that, because we have a well established review stage, this should be seen an integral element of the overall investigation process. If so, then



it could be the case that it falls under the wide discretion the Ombudsman has (under s.11(3) etc.) to conduct an investigation 'as she considers appropriate'. That would then link to the fact the Ombudsman refers to 're-opening' powers within the Delegation Scheme.

Yet I'm not sure if that can be argued in that way - and it's really for to decide.

- anything to add?

Regards  
Andrew

---

**From:**  
**Sent:** 21 February 2017 18:14  
**To:** ; [ombudsman.org.uk](http://ombudsman.org.uk)  
**Cc:**  
**Subject:** Request for info - URGENT  
**Importance:** High

This message has been classified as Sensitive.

Good evening Customer Care Team and Casework Team

We have received the following request for information:

Please can you provide any or all internal documents which;

1. show what the Ombudsman's powers currently are to re-open or start a new investigation into a complaint that has already been investigated.

[NB: will need to see/approve/complete this]

*Under the s.3(1) of HSC Act (s.5(1) of the PCA Act), the Ombudsman has the authority to commence an investigation upon receipt of a complaint (or referral of a complaint from an MP for complaints received under the PCA Act). In addition, under s.11(3) of the HSC Act (s.7(2) of the PCA Act), the Ombudsman has the authority to conduct an investigation as she considers appropriate.*

*As such, the Ombudsman has a wide discretion to carry out her work. In order to do that, the Office has, over time, developed procedures that sets out how the Ombudsman will conduct and complete investigations. This includes the procedure whereby the Ombudsman will look at any concerns a party has about how the Ombudsman conducted the investigation, and the investigation decision itself. We currently call this our 'review' process.*

*As a key Principle of Good Administration and Remedy, we would expect any public body to put matters right as soon as possible if it is clear that mistakes have occurred. This is an important principle for the Ombudsman's work too.*

*As explained below, we would look at whether the concerns raised meet set criteria. If they do, and the outcome is that we believe this means that the investigation decision is unsound, we would carry out new work on the complaint. This would be done on the basis that the concerns raised by the parties are, in effect, to be considered as receipt of a fresh complaint as described under s.3(1) of the HSC Act (s.5(1) of the PCA Act).*

NOTE TO This is our current position, as per Dyer, but it might be argued that our review process is actually part of our 'conduct of an investigation' process and falls under s.11(3) and so we have a wide discretion to carry out a fresh investigation if the review criteria is met. will advise.

2. give guidelines as to the criteria which would currently need to be met for it to be decided 'that a procedural requirement was not followed'

*Our review process is currently under review as we have recently completed some structural changes and all review work is now carried out by our Customer Care team. Our existing guidance [see attached] sets out that, in order for us to consider that an investigation decision is unsound, we would need to see that one (or more) of the following has occurred:*

- Did we make our decision based on evidence that contained facts that were not accurate and which could change our decision;*
- Has the complainant provided new and relevant information that was not previously available and which might change our decision; or*
- Did we overlook or misunderstand parts of the complaint or not take account of relevant information, which could change our decision.*

*If one or more of this criteria is met, a reviewer (with no prior connection to the case) would examine the issues in more detail. This would include consideration of "what happened" and "what should have happened", which would involve consideration of whether the Investigation followed our Service Model procedural requirements. Whilst important, the main focus for our review process is to establish whether there is clear evidence that one of the above criteria has occurred in the investigation, and which clearly shows that our decision may well be different had what happened not occurred.*

4. show at what level the decision would currently be taken that the criteria had been met for opening or starting a new investigation into a complaint that had already been investigated.

*Our Delegation Scheme [see attached, but I have pasted the relevant bit below] sets out the relevant authority level for such decisions in line with the Ombudsman general discretion to conduct investigations (please note the Delegation Scheme is also subject to review following structural changes):*

- The power to reopen investigations I delegate to the Managing Director, Deputy Ombudsman and the Executive Director of Operations and Investigations.**

5. Also any current guidelines as to how such a re-opened or new investigation would be conducted including time scales, what level of staff would oversee these etc.

*Our existing guidance sets out that any additional work required on an investigation (following an upheld review) will be treated as a new investigation - and so the normal processes for carrying out an investigation would apply. However, such cases would be allocated to a new investigator as a priority. The Investigator would then contact the parties to discuss the potential scope of the investigation and obtain comments as per our normal process. At this stage, the investigator would also discuss with the parties what timescales are appropriate bearing in mind the specific circumstances of the case.*

*Our guidance notes that any further investigation would be treated as a priority and its risk rating would be set to 'High'. That would mean that oversight of progression of such*

*investigations would occur at Assistant Director or Director level, and approval of the eventual investigation decision would occur at Director or Executive Director level (or above). Again, this would be subject to the particular planning for the investigation in line with the circumstances of the case.*

6. explain under what powers the Ombudsman can currently implement proposed provisions ahead of their being accepted by Parliament by means of proposed bill.

I plan to refer the requester to the service model guidance but please let me know if you have any specific information to provide, particularly for questions 3, 4 and 5.

The response to this request is due by 2 March and needs time for senior sign-off, so please get back to me by close of business on **Thursday 23 Feb.**

Kind regards

Legal Assistant  
Parliamentary and Health Service Ombudsman  
T: 0300  
E:  
W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

---

**From:**  
**Sent:** 27 February 2017 10:11  
**To:**  
**Subject:** RE: FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation

This message has been classified as **Sensitive**.

Thanks        The changes look good and cover what has been asked. I will get it to Amanda and Rebecca now.

Kind regards

Legal Assistant

---

**From:**  
**Sent:** 24 February 2017 19:05  
**To:**  
**Subject:** RE: FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation

This message has been classified as **Sensitive**.

Thanks

Shorter response attached- can you consider if this covers all the points raised? If not, can we have a call on Monday so we cover this in the deadline?

If it is ok, this can go to Rebecca and Amanda for sign off with a note that Andy has been consulted, and I have approved

Regards

---

**From:**  
**Sent:** 24 February 2017 16:48  
**To:**  
**Subject:** FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation

This message has been classified as **Sensitive**.

Good afternoon

You would have seen the email from Andrew Medlock outlining the proposed answers to this FOI. I have used that information to form the basis of the draft response. The draft response and the two attachments he sent for release are **attached** for your consideration. Please let me know if you have any comments. I will then get this to Rebecca and Amanda for sign-off.

I have also **attached** the information from Philipp Mende regarding PACAC that you have asked for. I see that it contains a table of the number of review request - is this the information you were referring to digging out? Would you like this document or the table to be included in the response?

The final response is due to go out on **Thursday 2 March**. Please let me know if you have any questions or require anything further.

Kind regards

**Legal Assistant**  
Parliamentary and Health Service Ombudsman  
T: 0300  
E:  
W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

---

**From:**  
**Sent:** 15 February 2017 19:59  
**To:**  
**Cc:** Marsh Rebecca; Hawksbee Adam  
**Subject:** RE: FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation

This message has been classified as **Sensitive**.

Hello

Agree with approach at this stage. The draft response will need to be shared with Rebecca Marsh (copied in) and approved possibly by CEO (so Adam also copied in)

Service Model attached [Review Guidance 1.0 20141016](#). This shows the process and criteria by which complainants can make a request for a review. This was introduced in October 2014 and has not been changed or amended since. The challenge is that once accepted for review, there is no process or guidance for how reviews are handled. Andy Medlock's team undertook a review of Customer Care late 2016 and could not find any "up to date" guidance on how reviews are handled.

Can you dig out the FOI request on the number of reviews and include that as part of the consideration? Can you also check with Philipp what response has gone to PACAC on the question they have raised on review?

Regards

---

**From:**  
**Sent:** 15 February 2017 15:51  
**To:**  
**Subject:** FW: FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation

This message has been classified as **Sensitive**.

Hi all

Please see the request below which shines a light towards the *functus officio* issue. I was hoping to draw on some of your expertise on how to respond here.

So far, my thinking for the response will be a high level: Ombudsman's powers are derived from the Acts, outline the review criteria and service model guidance etc then perhaps a more in-depth explanation to respond to questions 4 and 5 possibly from CCT or OCWT.

I feel a bit stuck with this one, so please do let me know if you have any thoughts about how best to respond.

Also, should I be drawing this request to the attention of anyone/seeking sign off from another team?

Thanks

**Legal Assistant**  
Parliamentary and Health Service Ombudsman

-----Original Message-----

From: phsothefacts Pressure Group [<mailto:request-387095-0552ee5c@whatdotheyknow.com>]

Sent: 02 February 2017 19:36

To: InformationRights

Subject: FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation

Dear Parliamentary and Health Service Ombudsman,

Please can you provide any or all internal documents which;

1. show what the Ombudsman's powers currently are to re-open or start a new investigation into a complaint that has already been investigated.
3. give guidelines as to the criteria which would currently need to be met for it to be decided 'that a procedural requirement was not followed'
4. show at what level the decision would currently be taken that the criteria had been met for opening or starting a new investigation into a complaint that had already been investigated.
5. Also any current guidelines as to how such a re-opened or new investigation would be conducted including time scales, what level of staff would oversee these etc.
6. explain under what powers the Ombudsman can currently implement proposed provisions ahead of their being accepted by Parliament by means of proposed bill.

Yours faithfully,

Della Reynolds

phsothefacts Pressure Group

-----  
Please use this email address for all replies to this request:

request-387095-xxxxxxx@xxxxxxxxxxxxx.xxx

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**From:** Medlock Andrew  
**Sent:** 17 March 2017 12:31  
**To:** Marsh Rebecca;  
**Subject:** New letters for notifying Organisations and complainants about a new investigation  
**Attachments:** V3.doc;  
0493LettertoYorkTeachingHospitLetterinformingTrustwearecarryingoutanewinvestigation-V3.doc  
**Importance:** High

This message has been classified as **Sensitive**.

Dear Rebecca/

Following on from our conversations with Amanda regarding Functus Officio, I have now been able to look into the actions Amanda asked for regarding a standard letter template to be used if we (via an upheld review) are proposing we carry out a new investigation.

By way of recap, I took from that meeting that we needed a template structure for both parties, which I have broken down into the following elements:

*For the Organisation*

- A brief summary outlining what the complainant has raised with us;
- A standard line about how our Principles expect organisations to review concerns people have with decisions - and to put things right if they have made a mistake. This could include carrying out new work. These principles are just as important to how PHSO works;
- A summary that outlines what conclusions we reached on the review;
- A clear decision that we are 'proposing to carry out a new investigation'
- Provide a broad summary of what the investigation will cover. NOTE: this will differ in certain cases where we are only deciding to look at specific issues, so we need to look at that in more detail.
- That the Organisation has 2 weeks to comment. (and any Named Persons).
- A standard paragraph acknowledging that this will come as a surprise to the Organisation (who thought it was closed) and that we do not take such decisions lightly etc.
- Next steps

*For the complainant*

There is less 'standard template' about this, but rather that we say (after giving our review conclusions):

- We are proposing to carry out a new investigation
- Provide the broad summary of what the investigation will cover (as per above)
- Before we do so, to be fair to the Trust, we need to write to them to explain/comment etc. (i.e. as above).
- Next steps.



Really, this is replicating the 'accept in principle' stage, but clearly tailored to the circumstances surrounding the review process.

I have been working on a high profile review case (Nicholson) and so this was timely in beginning to think about this.

Please find attached the letters I have worked on that (hopefully) will be going out in this case. They hopefully cover these elements as above.

### Next steps

- For now, as we have outstanding reviews, I have asked my Reviewers to revisit their outstanding reviews and make sure that we follow the template structures as above. I have said that Amanda will be expecting letters to follow this pathway now. Apologies to all of you who have already submitted work to me! I have shared with them the letters on Nicholson by way of an illustration of how these can be presented.
- I have asked \_\_\_\_\_ and \_\_\_\_\_ to create a short guidance note for all CCT staff on this. They will also share the Nicholson letter/outcome with the team as the CCO's begin to transition work on to review cases. Please let me see the guidance note before it is issued. This guidance should be in place by end of March. This will then become subsumed into the work we are about to do on creating a new CCT guide/handbook for staff.
- I have also asked \_\_\_\_\_ to check all incoming cases being referred to Private Office in line with the above.

I have stressed that the letters/structure referred to above is subject to review, and so they may well change things.

Any questions please do let me know.

Regards

**Andrew Medlock**  
**Assistant Director - Customer Experience**  
Parliamentary and Health Service Ombudsman  
T: 0300

E:

W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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**From:**  
**Sent:** 24 March 2017 15:26  
**To:**  
**Subject:** RE: FDN-274511 Re: FDN-274362 Response to your request for information  
**Attachments:** Re: FDN-274362 FOI response for sign off

This message has been classified as **Sensitive**.

Hi

I have had a chance to clear some emails and have attached the response from Amanda Campbell from when I sought clearance for our response to the first request (FDN-274362). I am happy to respond to her email, but it may be that she is interested in seeing our response to this new request (FDN-274511).

Kind regards

**Legal Assistant**  
Parliamentary and Health Service Ombudsman  
T: 0300  
E:  
W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

---

**From:**  
**Sent:** 23 March 2017 20:39  
**To:** InformationRights;  
**Cc:**  
**Subject:** RE: FDN-274511 Re: FDN-274362 Response to your request for information

My suggested responses for 1-2 following the numbering are in red below and a query about how we may be able to find information on 3

Regards

---

**From:** InformationRights  
**Sent:** 23 March 2017 18:02  
**To:**  
**Cc:**  
**Subject:** FW: FDN-274511 Re: FDN-274362 Response to your request for information

Hello

This FOI request from PHSothefacts via WDTK is allocated to you. It is an expanded request that originally dealt with and the target response date is **Tuesday 04 April 2017**.

is happy to assist while she's still here and she suggests that it may need input from so I am also copying her in for information.

Kind regards,

Business Support Officer  
Legal and Governance

T:

E:

**Please note my working days are: Legal – am Governance – pm**

-----Original Message-----

From: phsothefacts Pressure Group [<mailto:request-387095-0552ee5c@whatdotheyknow.com>]

Sent: 07 March 2017 12:12

To: InformationRights

Subject: FDN-274511 Re: FDN-274362 Response to your request for information

Dear InformationRights,

Thank you for your prompt reply to my FOI request. Please could you clarify your answer at point 6:  
I have searched the sources you have referred me to and I cannot see that the answer to my question is available in the existing legislation or the draft bill.

If I may clarify the information I am asking for by giving an example:

In the draft bill:

64 Subsections (6) and (7) allow the Ombudsman to re-open or start a new investigation into a complaint that has already been investigated if it is in the interests of fairness to do so. This power might be used, for example, if an investigation turned out to have been flawed because a procedural requirement was not followed. Without this provision, the Ombudsman would have to apply to the courts to set aside the first investigation.

It is a matter of public record that, since 2015, you have re-opened or started new investigations into complaints that had already been investigated.

These were cases where investigations had been found flawed because a procedural requirement was not followed (such as new evidence at draft stage not taken into account by investigators) and you had decided it was in the interests of fairness to do so.

However, the proposed provision, as laid out in the draft bill, as above, has not yet been passed by Parliament.

1. I repeat my request that you refer me to the specific references in the legislation which makes clear:

Under what powers has the Ombudsman implemented and can the Ombudsman currently implement proposed provisions of the proposed draft bill ahead of their being accepted by Parliament by means of the proposed draft bill? **No statutory powers to do so exist.**

2. In addition, please can you point me to the page and reference number of the current existing legislation which:

a. enables the Ombudsman to currently apply to the courts to set aside the first investigation when the Ombudsman has found the first investigation to be flawed

b. stipulates that the Ombudsman may not, unilaterally, make the decision to withdraw an Ombudsman's report when the Ombudsman has found this to be flawed.

If no such legislation exists covering a) b), please say so. **No statutory power exists**

3. In addition, please state how many such applications have been made to the courts, and on what dates these were made. **is there a way we can check back through some annual reports to see how we have reported on JRs so that we can identify whether any have been made as a result of PHSO application?**

Yours sincerely,

Della Reynolds

phsothefacts Pressure Group

-----Original Message-----

Dear Ms Reynolds

Your information request: FDN-274362

I write in response to your email of 2 February 2017, in which you requested information held by the Parliamentary and Health Service Ombudsman (PHSO) the following terms:

“Please can you provide any or all internal documents which;

1. show what the Ombudsman's powers currently are to re-open or start a new investigation into a complaint that has already been investigated.

3. [sic] give guidelines as to the criteria which would currently need to be met for it to be decided 'that a procedural requirement was not followed'

4. show at what level the decision would currently be taken that the criteria had been met for opening or starting a new investigation into a complaint that had already been investigated.

5. Also any current guidelines as to how such a re-opened or new investigation would be conducted including time scales, what level of staff would oversee these etc.

6. explain under what powers the Ombudsman can currently implement proposed provisions ahead of their being accepted by Parliament by means of proposed bill.”

Your request has been considered under the provisions of the Freedom of Information Act 2000 (FOIA). Please find the enclosed documents and information in response to your request below.

## 1. Ombudsman's powers

The Ombudsman's powers are derived from the Parliamentary Commissioners Act 1967 (PCA) and the Health Service Commissioners Act 1993 (HSCA) (the Acts). The Acts are publically available on the Ombudsman's website here:

[1]<https://www.ombudsman.org.uk/about-us/who-we-are/legislation>

Under section 5 of the PCA and section 3 of the HSCA, the Ombudsman has the authority to decide whether or not to conduct an investigation and, under section 7(2) of the PCA and section 11(3) of the HSCA, the Ombudsman has the authority to conduct an investigation as she considers appropriate.

Having made a decision on whether to conduct an investigation or conclude an investigation, any appeal is by way of judicial review. The Ombudsman has developed a process of internal review to identify any material issues arising from her public law decisions using criteria. Where appropriate, the Ombudsman may consider that a fresh investigation may be appropriate.

## 3. Criteria for decision that 'procedural requirement was not followed'

Our existing guidance provided to complainants (attached) sets out the criteria we use:

- Did we make our decision based on evidence that contained facts that were not accurate and which could change our decision;
- Has the complainant provided new and relevant information that was not previously available and which might change our decision; or
- Did we overlook or misunderstand parts of the complaint or not take account of relevant information, which could change our decision.

## 4. What level would the decision to re-open or start a new investigation be made?

The decision to propose a new investigation is made by the Ombudsman, the Chief Executive or the Executive Director of Operations and Investigations.

## 5. Guidelines for a re-opened or new investigation

The decision to conduct a fresh investigation means that the normal statutory processes for carrying out an investigation apply. These cases are allocated to a new investigator and supervision is provided by an Assistant Director or Director and the final report is approved by a Director or Executive Director.

## 6. Ombudsman's powers and proposed draft Public Services Ombudsman bill

As I have outlined above in response to your first question, the Ombudsman's powers are derived from the Acts currently in force.

Information about the powers of the Public Service Ombudsman is outlined in the draft bill which is publically available on the gov.uk website  
here:

[2]<https://www.gov.uk/government/publications/draft-public-service-ombudsman-bill>

I hope that this information is useful. If you believe there has been an error in the processing of your information request, it is open to you to request an internal review. You can do this by writing to us by post or by email to [3][Parliamentary and Health Service Ombudsman request email]. You will need to specify what the nature of the issue is and we can consider the matter further. Beyond that, it is open to you to complain to the Information Commissioner's Office ([4][www.ico.org.uk](http://www.ico.org.uk)).

Yours sincerely

Freedom of Information and Data Protection Team

Parliamentary and Health Service Ombudsman

From: phsothefacts Pressure Group

[mailto:[FOI #387095 email]]

Sent: 02 February 2017 19:36

To: InformationRights

Subject: FDN-274362 Freedom of Information request - Ombudsman powers to reopen an investigation

Dear Parliamentary and Health Service Ombudsman,

Please can you provide any or all internal documents which;

1. show what the Ombudsman's powers currently are to re-open or start a new investigation into a complaint that has already been investigated.
3. give guidelines as to the criteria which would currently need to be met for it to be decided 'that a procedural requirement was not followed'
4. show at what level the decision would currently be taken that the criteria had been met for opening or starting a new investigation into a complaint that had already been investigated.
5. Also any current guidelines as to how such a re-opened or new investigation would be conducted including time scales, what level of staff would oversee these etc.
6. explain under what powers the Ombudsman can currently implement proposed provisions ahead of their being accepted by Parliament by means of proposed bill.

Yours faithfully,

Della Reynolds

phsothefacts Pressure Group

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References

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2. <https://www.gov.uk/government/publications/draft-public-service-ombudsman-bill>
3. [mailto:\[Parliamentary and Health Service Ombudsman request email\]](mailto:[Parliamentary and Health Service Ombudsman request email])
4. <http://www.ico.org.uk/>
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**From:** Campbell Amanda  
**Sent:** 08 March 2017 14:02  
**To:**  
**Cc:** Marsh Rebecca; Hawksbee Adam  
**Subject:** Re: FDN-274362 FOI response for sign off

Hi

I am not sure if you are still waiting for agreement to this FOI or not. The normal procedure would be (I believe) for Rebecca to authorise this as SIRO. I would not expect to clear an FOI unless it was highly contentious or had the potential to be reputationally damaging. It is helpful though to copy me into FOI responses from key organisations such as this one, so please continue to do this.

For this FOI, I would be content to clear it subject to first seeing the review guidance. The question I have relates to the issue of opening a fresh investigation. The way the response is worded implies that the Ombudsman can just decide to do this. I thought that if our investigation was concluded, a fresh investigation could only commence if the complainant agreed to initiate this? Perhaps you could clarify this too?

Regards

Amanda

Sent from my iPad

On 2 Mar 2017, at 11:50, < > wrote:

This message has been classified as **Sensitive**.

Good morning Amanda and Rebecca

Just a reminder that this FOI response is due to go out today. Please let me know if you have any comments to make 5p.m so that I can meet the statutory deadline.

Kind regards

**Legal Assistant**

Parliamentary and Health Service Ombudsman

T: 0300

E:

W: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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**From:**

**Sent:** 27 February 2017 10:23

**To:** Campbell Amanda; Marsh Rebecca

**Subject:** FDN-274362 FOI response for sign off

This message has been classified as **Sensitive**.

Good morning Amanda and Rebecca

Please find **attached** the draft response to a Freedom of Information request from the PHSO the Facts Pressure Group. Andrew Medlock has been consulted and Homes has approved this. I now send it to you for sign-off prior to releasing the information.

The final response is due to go out on **Thursday 2 March 2017**. Please let me know if you have any questions or require anything further.

Kind regards

**Legal Assistant**

Parliamentary and Health Service Ombudsman

T: 0300

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