



Northern Ireland

Public Services

Ombudsman

Investigation Report

Investigation of a complaint against the Department of Health

NIPSO Reference: 202001078

The Northern Ireland Public Services Ombudsman

33 Wellington Place

BELFAST

BT1 6HN

Tel: 028 9023 3821

Email: nipso@nipso.org.uk

Web: www.nipso.org.uk



@NIPSO_Comms

The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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Case Reference: 202001078

Listed Authority: Department of Health

SUMMARY

I received a complaint from a member of the public who said the Department of Health (the Department) had imposed restrictions on her because her correspondence was considered to be '*vexatious*'. The complainant, who described herself as a '*campaigner*', had questioned Departmental staff in relation to her concerns about funding in the health service in Northern Ireland.

My investigation did not consider whether the Department's decision to label her correspondence vexatious was justified; this was a discretionary matter. Rather, I focussed on the management of her correspondence, in particular what policy and procedures were in place and whether the Department followed them.

My investigation found no evidence that the Department informed the complainant she should avoid vexatious communication or, what constituted vexatious communication or, the possible consequences of persisting with such behaviour. The Department had no policy for dealing with vexatious communication and the process adopted therefore appeared arbitrary.

Acknowledging the importance of protecting staff from vexatious communication, I concluded that there were failures in the management of the complainant's correspondence, which were unfair and constituted maladministration. This caused the complainant the injustice of uncertainty, frustration and upset as she sought to engage with the Department.

I recommended that the Department apologised to the complainant in writing and clarified its current position. I welcomed the Department's decision to draft a policy for handling vexatious communication, a copy of which I received in January 2023.

THE COMPLAINT

1. I received a complaint about the actions of the Department of Health (the Department). The complainant said the Department had placed restrictions on her communications because it considered her 'vexatious'. The complainant said this was unfair.

Background

2. The complainant was an advocate of *Public and Personal Involvement*, the term used to describe the concept of involving ordinary people and local communities in the planning, commissioning, delivery and evaluation of the health and social care services they receive.
3. The complainant described herself as a '*campaigner*'. She regularly contacted organisations, including the Department on issues of concern. She would submit FOI¹ requests and raise concerns and/or submit complaints if responses were delayed or information was not provided to her satisfaction.
4. The complainant had a concern for the provision of good mental health services in the area covered by the Western Health and Social Care Trust. She considered the sector had lost out on significant funding because the Government had, wrongly in her opinion, used those funds elsewhere. The complainant wrote to the Department seeking to find answers and hold those responsible to account.

Issue of complaint

5. The issue of complaint accepted for investigation was:
Whether the Department of Health appropriately managed its procedure to deem the complainant and/or her correspondence vexatious.

¹ Freedom of Information – a reference to the public's statutory entitlement to request information from public bodies.

INVESTIGATION METHODOLOGY

6. In order to investigate this complaint, the Investigating Officer obtained from the Department all relevant documentation together with its comments on the issues raised by the complainant.

Relevant Standards and Guidance

7. To investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case. I also refer to relevant regulatory, professional and statutory guidance.
8. The general standards are the Ombudsman's Principles²:
 - The Principles of Good Administration
 - The Principles of Good Complaints Handling
9. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions of those individuals whose actions are the subject of this complaint.
10. The specific standards and guidance relevant to this complaint are:
 - The ICO³ guidance *Dealing with vexatious requests (section 14)*, version 1.3 (ICO guidance);I refer to relevant extracts of the guidance within the body of this report.
11. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the body complained of. It is not my role to question the merits of a discretionary decision taken unless that decision was attended by maladministration.
12. I did not include all of the information obtained in the course of the investigation in this report but I am satisfied that everything that I consider to be relevant and important was taken into account in reaching my findings.

² These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

³ Information Commissioner's Office

13. A draft copy of this report was shared with the complainant and the Department for comment on factual accuracy and the reasonableness of the findings and recommendations.

THE INVESTIGATION

Issue: *Whether the Department of Health appropriately managed its procedure to deem the complainant and/or her correspondence vexatious.*

Detail of Complaint

14. In 2017, the complainant raised complaints in relation to four members of staff within the Department. The Department investigated the complaints and wrote to the complainant on 21 December 2017, informing her that the internal complaints process had run its course and, directing her to NIPSO if she wished to pursue the matter further. The complainant engaged in further written correspondence with the Department.
15. On 12 June 2018 the complainant received a letter from the Department which stated that her correspondence was deemed to be vexatious, and that staff were advised not to respond to any further correspondence from her. The letter is attached at appendix three.
16. The complainant subsequently sought details of the correspondence upon which the Department had based its decision. The Department provided her with a list, appendix four.
17. The complainant felt the Department had acted improperly and unjustly towards her. She felt she had been treated unfairly. She also believed the Department had placed a permanent restriction on her communications. She said the Department's actions were contrary to ICO⁴ guidance in that she was not given a warning and the Department had failed to demonstrate how her communication was excessive.

Evidence Considered

⁴ Information Commissioner's Office – an independent official who oversees the handling of information by public bodies.

Legislation/Policies/Guidance

18. I considered the following guidance:

- ICO guidance

Department's response to investigation enquiries

19. The Department said it did not have a policy for dealing with unacceptable customer behaviour or a policy, which enables the Department to deem someone as vexatious. The Department said that, prior to its dealings with the complainant, such policies had not been required.

20. The Department said *'the ICO guidance in respect of vexatious requesters under FOI was considered as best practice guidance in consideration of this issue and does not contain any requirement to provide a warning.'*

21. The Department said *'there is no requirement for the Department to demonstrate that the communication was excessive. The Departments view remains that the communication was excessive based on the Departments experience of corresponding with [the complainant].'*

22. In response to the Investigating Officer's question:

'Is it accepted that [the complainant] was not made aware that the Department was considering her correspondence to potentially be vexatious and that she was not afforded the opportunity to reconsider and/or amend her behaviour before the decision was made?'

The Department said *'there is no guidance in relation to this issue.'*

23. The Department's Director of Corporate Management said *'at no point during communication with [the complainant] did I or any other Departmental official give [the complainant] any "official warning" about her correspondence or behaviour towards DoH staff.'*

Relevant Department records

24. All the correspondence between the complainant and the Department was obtained. In particular, the correspondence between both parties prior to the Department's letter of 12 June 2018. A list of the correspondence is included at appendix four.

Other information considered

Complainant's response to the draft report

25. The complainant sought to explain that she was not vexatious and expressed her view of what does and does not constitute vexatiousness. She also referred to correspondence dated 31 August 2022 in which she said the Department had again unfairly labelled her vexatious.
26. The complainant referred to the Personal and Public Involvement (PPI) policy, a policy which requires health and social care bodies to involve service users, carers and other key stakeholders to enable the effective planning, commissioning, delivery and evaluation of health and social care services. The complainant said this policy is undermined when Government bodies refuse to engage with members of the public.

Department's response to the draft report

27. The Department said the approach taken was reasonable and staff had maintained a professional manner '*throughout*' despite '*provocation*' from the complainant.
28. The Department referred to the complainant's claim that she had been permanently excluded from communicating with the Department and highlighted documentary evidence to refute the allegation.
29. The Department said that giving a warning of unacceptable behaviour, is a '*suggestion within ICO guidance, rather than obligatory.*' The complainant continues to message staff directly which is '*clear evidence*' she would have continued the '*harassment*' of staff even if a warning had been given prior to the 12 June 2018 letter.

Analysis and Findings

30. The complainant described herself as a '*campaigner*'. She had concerns about the use of public funds. Over several months, she sent numerous emails to various officials in the Department seeking information and answers to questions. The complainant was not satisfied with the responses she received and so she raised complaints both against the Department and against named members of staff who

she considered were at fault.

31. The Department applied its internal complaints procedures and gave its final response to the complainant by letter dated 21 December 2017. The complainant remained dissatisfied.
32. The Department considered the tenor of the complainant's expressed dissatisfaction to be vexatious and was concerned for the welfare of staff who were on the receiving end. The Department informed the complainant that her correspondence was '*vexatious*' and that staff would be '*advised not to respond to any further correspondence*' (letter of 12 June 2018).
33. At this point I want to highlight the distinction between the Department's letter of 21 December 2017 and the letter of 12 June 2018. In its earlier letter the Department signalled the end of the internal complaints process. In that context, the Department informed the complainant it would not be entering into further related dialogue. The Department correctly directed the complainant to NIPSO at that point.
34. The Department later⁵ informed the complainant that the letter of 12 June 2018 had deemed her vexatious. I acknowledge that a decision to deem the complainant or her correspondence vexatious were one and the same thing.

⁵ Letter of 25 May 2021

35. I note the Department did not have a policy for handling unacceptable behaviour from customers. The fourth Principle of Good Complaint Handling, *Acting fairly and proportionately*, includes that *'A minority of complainants can be unreasonably persistent or behave unacceptably in pursuing their complaints. Public bodies should have arrangements for managing unacceptable behaviour.'* I therefore consider it was a failure by the Department not to have such arrangements in place.
36. In the absence of its own policy, the Department said it considered the ICO guidance as *'best practice'*. The Department provided the investigation with a copy of the guidance that it considered (version 1.3). The Department was clear that the ICO guidance did not contain any requirement to warn a customer of the consequences of persisting in vexatious correspondence.
37. However, under the heading *'Allow the requester an opportunity to change their behaviour'*, paragraph 109 of the ICO guidance said:
'The authority could try writing to the requester to outline its concerns about the way his previous requests have been framed, and to set out what he should do differently to ensure that further requests are dealt with.'
38. Under the same heading, paragraph 112 said:
'This can also serve as a 'final warning' with the authority having effectively given the requester notice that any future requests framed in a similar vein may be refused as vexatious.'
39. While the wording used in the ICO guidance is not a requirement to provide a warning, I consider the guidance nonetheless gave valuable direction on allowing the complainant an opportunity to change her behaviour. This is entirely in line with the approach I would expect a Government Department to take.
40. The investigation did not find evidence that the Department:
- informed the complainant (prior to 12 June 2018) there was a problem with her behaviour;
 - informed the complainant of her responsibility, as a customer, to avoid unacceptable behaviour;

- asked the complainant to change her behaviour; and
- informed the complainant of the potential outcome if the behaviour continued.

41. The fourth Principle of Good Administration, *'Acting fairly and proportionately'*, includes that *'When taking decisions, and particularly when imposing penalties, public bodies should behave reasonably and ensure that the measures taken are proportionate to the objectives pursued, appropriate in the circumstances and fair to the individuals concerned.'*
42. Taking account of this Principle and the ICO guidance, I am satisfied that it is appropriate to warn a vexatious customer of the likely outcome of their behaviour. It is fair to give them the opportunity to change their behaviour before any action is taken. On this basis, I do not consider the Department acted fairly and proportionately by labelling the complainant (or her correspondence) vexatious and instructing staff not to respond to her. This failure is exacerbated by the fact that relevant external guidance was consulted by the Department yet not adequately considered.
43. The Department said *'due to increased cases of unacceptable behaviour to staff, and an increase in vexatious communication with the Department from a significant number of individuals outside of FOI legislation through-out the pandemic, the development of such policy will now be considered by the Department/NICS.'* I welcome this commitment. The Department subsequently produced an *'Unacceptable Behaviour Policy'* and provided NIPSO with a copy in January 2023.
44. The complainant said the Department imposed a permanent restriction on her communication with staff. In response, the Department informed the Investigating Officer that *'this is not a life ban nor a ban on corresponding with the Department on other issues.'* The Department provided evidence of subsequent correspondence with the complainant. I therefore acknowledge the restriction placed on the complainant was not permanent.
45. The Department's letter of 12 June 2018 contained an extract from the previous letter of 21 December 2017. The extract directed the complainant to NIPSO and repeated that the Department would not be entering *'any further correspondence or*

discussion’ with the complainant in relation to her complaint or *‘any related issues’* or *‘concerning DoH staff at any level’*. Whilst this repetition might be construed as clarifying the extent of the restriction imposed, I consider it is relevant that those comments were made in the context of the Department’s internal complaints procedure, and not because of any decision that the complainant’s correspondence was vexatious. I am therefore not satisfied the Department gave adequate notice to the complainant of the extent of its decision, the period covered by its decision or whether there were circumstances under which the decision may be reviewed / appealed.

46. The third Principle of Good Administration, *Being open and accountable*, includes that *‘Public bodies should give people information and, if appropriate, advice that is clear, accurate, complete, relevant and timely.’* The fifth Principle of Good Administration, *Putting things right*, includes that *‘Public bodies should provide clear and timely information about methods by which people can appeal . . . ‘* I am not satisfied the Department’s decision letter of 12 June 2018 met these requirements. This was a further failure.
47. I consider that the Department’s failure to follow the Principles of Good Administration and Good Complaint Handling, and ICO guidance, as set out in my analysis, constitutes maladministration. As a consequence of these failings, I am satisfied the complainant experienced the injustice of uncertainty, frustration and upset. I therefore uphold the complaint. I understand why the complainant felt she had been treated unfairly by the Department.
48. Although the process which led to the Department’s letter of 12 June 2018 was not appropriately managed, my investigation did not find any evidence which would lead me to question the Department’s discretionary decision that the complainant’s correspondence was vexatious. Also, I do not consider it is possible to know whether the outcome would have been any different had the Department followed the Principles and the available guidance in this case.
49. On 31 August 2022, the complainant shared further correspondence she had received, in which the Department described other communications she had sent during 2022 to be *‘unacceptable and abusive towards staff’* and placed restrictions on further communications with her. The Department’s letter referred to previous

advice given to the complainant by letter of 12 April 2022 that *'correspondents who are persistently in contact with the department, as well as those not acting in a civil manner to departmental staff, may be considered to be acting in a vexatious manner with action taken as appropriate'*. The Department's letter of 31 August 2022 also provided information concerning how the restrictions could be reviewed.

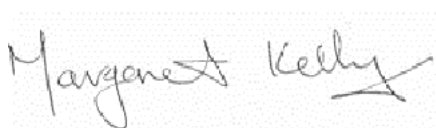
50. I consider this correspondence was more in line with the Principles of Good Administration referred to above.

CONCLUSION

51. I received a complaint about the Department's handling of a decision it made not to respond to communication from the complainant because the Department considered her correspondence to be vexatious.
52. My investigation found no evidence that the Department informed the complainant she should avoid vexatious communication, what constituted vexatious communication or, the possible consequences of persisting with such behaviour. I also found the Department did not have arrangements for managing unacceptable behaviour from complainants. I considered this conflicted with the Principles of Good Administration and Good Complaint Handling, and relevant ICO guidance, thereby constituting maladministration.
53. I am satisfied that the maladministration identified caused the complainant the injustice of uncertainty, frustration and upset.

Recommendations

54. I recommend that the Department provides the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (June 2016), for the injustice caused as a result of the maladministration identified (within **one month** of the date of this report). The letter should clarify the Department's current position.
55. I note the Department developed an 'Unacceptable Behaviour Policy' which covers vexatious communication. I welcome this step which I consider should reduce the possibility of future recurrence of the failures identified in this case.

A handwritten signature in black ink that reads "Margaret Kelly". The signature is written in a cursive style with a horizontal line under the name.

MARGARET KELLY
Public Services Ombudsman

19 June 2023

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.

- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.

- Providing honest, evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.