

This constitutes a slightly edited version of the feedback I emailed on 20.9.18 to ClinicalAdviceReview@ombudsman.org.uk for the consultation conducted by Sir Alex Allan. https://ombudsman.org.uk/sites/default/files/Final_Report_Clinical_Advice_Review.pdf PHSO's response to Sir Alex's report can be found here: <https://www.ombudsman.org.uk/clinical-advice-review> It doesn't seem as if PHSO have taken **any** notice in reality, see my 3rd clinical advisor response [here](#) which shows that the same clinical advice failings are still ongoing to the present day.

Some Key Comments from Sir Allan's report:

“While a small proportion of the complainants that responded suggested that the clinical advice used in their case was comprehensive, **the majority argued otherwise.**”

“**clinical advisers do not always understand the full context of their case**, which has the effect of undermining trust in this stage of the Ombudsman’s process”

“Questions were raised about **whether caseworkers were asking clinical advisers the right questions**. Feedback also suggested that key elements of the scope of complaints had not been reflected”

“A significant number of the **complainants that responded said that their evidence and testimony appeared to be given less weight than that of the organisation complained about**. Many felt ‘disbelieved by default’. They also said that much of the **evidence they submitted** in relation to their case, including medical notes, letters, and diary entries **was not properly considered.**”

“caseworkers must be ready to **challenge expert advice** like any other source of evidence, particularly if it appears to be **at odds with the weight of other evidence**”.

“A significant amount of the complainants and some NHS employees who responded said that they had been uncertain **whether the adviser used in their case had the appropriate specialism, experience or level of seniority to provide advice.**”

“A clinician from NHS England suggested that, “with regard to clinical advisers being named my view is **they should be**. As clinicians should all be accountable for the advice we give (*via the appropriate channels of course*). The process is also less transparent if the advisers are not named”.”

Also from the consultation paper (*emphasis added*):

*“It is important to stress that the clinical advice that caseworkers receive is exactly that, advice, not a decision. The caseworker uses the advice as **one part of the evidence** they have collected. They will then make a decision based on the **full individual facts** of the case and communicate this.”*

A lofty claim, considering the PHSO asked the clinical adviser in my case only 3 questions the third of which was (*emphasis added*): *“...please can the adviser comment on the accuracy of Simon Smith's response here? Is this advice accurate and can it therefore **be relied upon** in the course of this investigation?”*

So clearly, despite the claims about the process, the PHSO decision **is** hinging largely on the clinical advice for the decision and almost nothing else.

PHSO FAILINGS ON APPOINTING CORRECTLY QUALIFIED/SUITABLE 1st ADVISER FOR ROLE

1. My complaint was about diagnostic failure resulting from sub-standard clinical assessment

practice and all the detriment flowing from that and I provided PHSO with medical **and** clinical evidence. Despite having since discovered a virtually **identical** PHSO complaint regarding the same diagnosis online with procedural failings, in which the PHSO investigator stated to that complainant in their letter: **“our role is more limited to looking at how the diagnosis was reached”**, PHSO **changed** (re-scoped) the basis of my investigation, to be only on whether the funding panel had followed procedures (*which was not the main focus of my complaint, being only 1 point out of 7 made in the complaint form*) and because of using this alternative scope, they employed a nurse who had experience in funding panel procedures as an adviser and ignored all my evidence.

2. Because the funding panel decision (*decision-making is part of the panel's procedural role*) to refuse funding, was made on the basis of the panel relying entirely on the previous (*erroneous*) NHS opinions, the clinical adviser needed to be someone at a diagnostically qualified level, to understand **why** the practices that led to the NHS opinions were deficient and sub-standard and hence the funding panel decisions were flawed. The funding panel **had** to consider the assessments (*and indeed commented on the validity of them, in a most contradictory manner*) in order to justify their decision and it was for the very purposes of the existence of the previous NHS opinions and the alleged expertise of the doctors, that they refused funding, which is documented. A clinical adviser who is only a nurse, is not ethically or medically qualified to comment on this matter. So even on the unsatisfactory amended basis of investigation, PHSO failed at appointing the correct clinical adviser.
3. In PHSOs **“Clinical Advice Directorate Guidance notes for the provision of Clinical Advice”** document it says: *“When assessing the standard of care, PHSO does not use the Bolam/Bolitho principle (which refers to the ‘reasonable body of clinical opinion’) because these are tests used in the courts in relation to medical negligence. PHSO makes determinations about maladministration and service failure, not* medical negligence. The test we ask our Clinical Advisers to apply is what was ‘established good practice’ (this is not the same as ‘accepted’, ‘best’ or ‘reasonable practice’ or ‘what could be expected’) at the time.”* (even though in reality this conflicts with their above statement: **“our role is more limited to looking at how the diagnosis was reached”**)

As the adviser was not diagnostically qualified, she couldn't reasonably comment on whether clinical procedures had been followed or not, as she was wholly under-qualified and therefore her advice was entirely inadequate. This is further proven by the nature of the statements she made.

PHSO FAILINGS REGARDING PASSING JOB TO 1st CLINICAL ADVISER

1. Failed to inform the adviser (*which can only have been deliberate*) that the NHS **were** in fact **fully aware** of the credentials of the private diagnostician who diagnosed me leading to her making a false statement in her advice: **“Given the NHS had not funded this assessment and knows nothing of their clinical expertise...”**
2. The adviser worded her report as if all involved NHS staff were diagnostically qualified, by saying I was assessed by four professionals, when in fact only two of them in total were responsible diagnostically (*one per clinical assessment*) to make an argument against my complaint, despite that I have a total of **three** independent private professionals (*two highly diagnostically qualified*) who confirmed my diagnosis, which is a superior weight of evidence against the NHS, but which the adviser was clearly **not** apprised of by PHSO.
3. The adviser stated she saw no evidence of **“collusion”** between the two doctors, I didn't use the term **“collusion”**, but as the one doctor who I saw first, sat in when I saw the second and they were both from the same very small clinic, this is a ludicrous statement as clearly they

had consulted beforehand and would **have to** had done so, as it was the first doctor I asked to arrange a 2nd opinion, so he arranged it directly with the 2nd doctor!

4. PHSO repeated a **provable lie** from the NHS that I had declined treatment resulting in false statements from the adviser *“Ongoing care was offered which she declined”* (and which is evidenced as a lie from the content of my complaint form to PHSO alone). The Trust deliberately mislabelled me with anxiety despite not having even tested me for this. Offering inappropriate/unnecessary mental-health support cannot be deemed acceptable. I did not decline treatment, as can be seen [here](#). A year after my NHS assessments I was referred for CBT for something entirely **unrelated**, they closed down my referral (*allegedly accidentally*) and I had been waiting 2 years, I was the one who chased it up and I have documentary evidence of this. When I saw the clinician, she said I had too much going on in my life for CBT but wrote to my GP, wording it as if I had declined it and they used this lie against me in my complaint. However, this was nothing to do with my NHS ASD assessments anyway, it was **3 years later!** My GP wrote to the Trust asking for support for Asperger's and they wrote back **refusing!**
5. Apparent failure to provide a copy of my private diagnostic report to the adviser (*who despite that, was unqualified to comment on it*).
6. Adviser was only asked three basic questions, the third of which, was not even from my complaint and much of the substance of my complaint was missing and clearly key facts were omitted, judging by things the adviser said.

MISTAKES MADE/FLAWED LOGIC BY 1st CLINICAL ADVISER

1. The adviser completely **failed** to identify multiple breaches of **two** of the Trust's own procedural manuals (*“Specialist Funding Panel Application Guidance Notes”* and *“Trust Commissioning Operational Policy Document”*), stating that she *“...could find nothing to suggest either [funding panel] was incorrectly carried out or flawed.”*
2. She **wrongly stated** that the trust knew nothing of the clinical expertise of the clinician who privately diagnosed me. In a fax to an NHS member of staff dated 20.2.13 which PHSO has a copy of on file (*along with emailed confirmation of the following*), I sent a copy of my clinical diagnostic report with doctor's name and website address with **quotes about his extensive training and experience**. This information, as well as information on the experience and qualifications of another very senior doctor and ASD training provider who subsequently verified my diagnosis, was **provided to the trust several times in writing**, (*including a link to her website with her full list of expertise and qualifications*) including by email to the Specialist Services manager **who sat on the Trust's funding panel**. Even if the NHS had not been aware of the expertise or qualifications in detail of the private doctor, his professional title was on the report and this should have been sufficient regardless.
3. Advisor made a derogatory comment about me, saying that I: *“...can't expect the NHS will endlessly fund assessments until she finds one that concurs with her view.”* especially in view of the fact that the assessments were by two close colleagues from the same small clinic, therefore **not independent** and neither followed adequate procedures which she was unqualified to comment on and it wasn't just 'my view', I had independent professional opinions diagnosing me. And I told the panel in my submission that if they would recognise my private diagnosis then I wouldn't even need a reassessment anyway. They refused to do this, even though it breaches NHS rules.
4. she also stated that my symptoms could be described by *“other conditions”* - but the doctor who diagnosed me privately, tested me for multiple conditions which could have similar symptoms and **ruled them all out**, which was **in his report**, that PHSO had a copy of. This may

well also therefore fall under the second category above, of PHSO failings in passing the job to the adviser.

5. Furthermore, she stated regarding the two NHS doctors who were colleagues at the same clinic, therefore not independent and the initial one had sat in on the 2nd opinion with the other doctor, that I: *“...agreed to be assessed by these clinicians and disagreed with their findings. That she did so is her right, but that does not invalidate the clinical opinions of these experts.”* What does invalidate them is that they did not follow basic acceptable procedures (i.e. were procedurally substandard) to reach those opinions. It also does **not** invalidate the findings of **three independent** private professionals who diagnosed me just because the NHS does not agree with them! And I had no idea that a 2nd opinion should be independent and that them sending me to the the same clinic, with a colleague would cause problems. This is just patient blaming.
6. She stated several times that I was offered treatment which I declined, this is a **provable lie** and is something resulting from PHSO repeating the NHS' lie about this (and which is evidenced as a lie from the content of my complaint form to PHSO alone). The Trust deliberately mislabelled me with anxiety despite not having even tested me for this. Offering inappropriate/unnecessary mental-health support cannot be deemed acceptable. I did not decline treatment, as can be seen [here](#). A year after my NHS assessments I was referred for CBT for something entirely **unrelated**, they closed down my referral (allegedly accidentally) and I had been waiting 2 years, I was the one who chased it up and I have documentary evidence of this. When I saw the clinician, she said I had too much going on in my life for CBT but wrote to my GP, wording it as if I had declined it and they used this lie against me in my complaint. However, this was nothing to do with my NHS ASD assessments anyway, it was **3 years later!** My GP wrote to the Trust asking for support for Asperger's and they wrote back **refusing!**
7. She stated that *“the purpose of clinical assessments is to diagnose any issues that an individual may have”* this assessment was not a general one, so this is **wrong**, it was only for **one specific condition**, Asperger's, so this does not excuse misdiagnoses or diagnostic failure of a condition which I genuinely have, which is **heritable** and both my children are also diagnosed with.
8. She stated that the NHS has a 'general duty of care' and stated that the NHS had discharged it's duty of care towards me. Clearly this is **not** the case, because all health assessments must be carried out competently, to at least minimum acceptable standards to discharge duty of care and on both occasions they were provably **not**, irrespective of the qualifications of the doctors and I had a new private diagnosis since the old assessments. And the NHS must comply with **statutory guidance** on supporting **autism!**
9. she talked in her report about the funding panel making decisions on the **available evidence and “the best available evidence at the time”** whilst ignoring totally that they **dismissed evidence** contrary to the NHS opinions, e.g. my private diagnosis which was **new evidence** since the assessments **three years prior**, therefore showed complete evidential bias. And how can **substandard assessments** be described as “best” evidence?!
10. she entirely ignored that the NHS is **obliged** to offer care for a condition **regardless** of whether it was diagnosed privately or on the NHS, by stating: *“The records do not support the view that she should be offered follow up care”* despite the NHS' own rules: *“You're still entitled to free NHS care if you choose to pay for additional private care.”* and *“your position on a NHS waiting list should not be affected if you choose to have a private consultation”* <http://www.nhs.uk/chq/Pages/2572.aspx?CategoryID=96&SubCategoryID=226> and *“As with*

any other patient who changes between NHS and private status, patients who pay for private care in these circumstances should not be put at any advantage or disadvantage in relation to the NHS care they receive. They are entitled to NHS services on exactly the same basis of clinical need as any other patient.”

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_096576.pdf And it's no good referring to what the records state when the records contain false information! That's the whole point of the complaint!

11. She stated that the panel were correct to refuse funding as it was only available 'if no treatment was available locally', using the clinical opinions from three years prior as evidence that it was, but this is entirely paradoxical and ludicrous, because it was those opinions being **inaccurate** that was the **reason** behind the funding panel application, plus that clinic had refused to see me again when I called them and asked and the Trust all knew this from the outset and **still** offered the funding panel and also I had asked for a reassessment which was offered out-of-town within the same Trust and then withdrawn again before the panels, meaning local treatment was **not** “available” to me, it may have been available as a service but it was only available to others, **not** myself.
12. She admitted in several places in her advice, that the funding panel **ignored my private diagnostic report** by stating: *“It does appear that the panel looked at the evidence provided in both NHS assessments in coming to their conclusions”*, then regarding the private diagnostic report: *“...this could have been considered. However, given that the NHS had not funded this assessment...it is not unreasonable that they used the NHS-funded opinions to form a judgement”* and yet incredibly stated that their conclusion was “reasonable” “on the basis of evidence presented to them”!
13. she entirely ignored NHS Constitution breaches and their failure to consider my best interests as a patient.

When I filed a new PHSO complaint in light of new evidence, which the NHS had refused to investigate, PHSO were intending investigating (*telling both me and the Trust they would*) but then changed their mind and merged it with the original complaint (*which as above, was investigated on something else as they re-scoped it*). I challenged this and a review of the decision was done. PHSO ended up obtaining a new clinical advice was obtained on the new complaint, despite the case being kept closed (*and has been ever since, despite a now 3rd clinical advice being obtained, for the reasons you will see below*).

2nd CLINICAL ADVISER – REVIEW OF DECISION TO CLOSE NEW COMPLAINT

I obtained a copy of the advice (dated 28.4.15) under SAR on 18.10.18. The adviser described himself thus: *“I am a registered medical practitioner and a member of the Royal College of psychiatry. I have experience in inpatient, crisis resolution, outpatient and community psychiatry. Based on my knowledge and experience I am qualified to offer advice in this case.”*

I had no mental ill-health at all, therefore of course I was not an inpatient either (*nor had I ever been*); I had no mental health crisis past or present; and outpatient/community psychiatry practice covers a wide range of conditions of which autism diagnosis is only one - and many psychiatrists have **no experience** in it. If a psychiatrist had inadequate or no training in autism, they would not be appropriate to comment on the quality of autism assessments by other clinicians. So how was he appropriate, going by his own bio?

Whilst a psychiatrist can *legally* diagnose autism spectrum disorders due to their qualifications, they may have had no autism training, or may have done a general module as part of their training (*which may have been many years prior*) but never assessed anyone for ASD or be experienced in recognising it. If all psychiatrists were fully trained in autism there wouldn't be psychiatrist training courses in autism such as this by **The Royal College of Psychiatrists**: https://www.rcpsych.ac.uk/traininpsychiatry/conferencetraining/conferencesandcourses/dec14_asd2018.aspx

On the section of the advice form where the adviser is required to enter which standard they used to benchmark, the adviser just put general waffle (*full of illogic*) in this section without any standard referenced:

“2 - Clinical advice (Please write in plain English with the relevant standards appropriately referenced)”

His advice did not follow procedures because of this glaring omission. So because I challenged this, this is why they have since obtained a **third** advice. But notice, that PHSO clearly **hadn't** contacted their adviser after he submitted his advice and inform him this information was missing, nor **rejected** the advice, but **used it** as bone fide, because the advice was dated **28.4.15**, 3½ years **before** I obtained a copy of the advice and found out. Yet they had **made their review decision** based on it and kept the case closed ever since. The advisor further stated:

“In routine practice the majority of diagnoses in psychiatry are provisional and therefore can be subject to change and revision.”

This comment, made in reference to the NHS assessments, was **completely omitted** from PHSO's review report, which would further evidence extreme bias against complainant and cover-up. This part of the advice backs up my complaint entirely. Because the NHS assessments were substandard and even if they hadn't been, they had the potential to be wrong by the adviser's above admission. And there was of course new clinical and medical evidence to change the NHS position. When I pointed this omission out to PHSO's Jonathan Roper, he incredibly replied: ***“By stating this, the adviser was explaining why a different diagnosis did not in itself mean the NHS assessments were wrong.”*** Clearly this is a gross distortion to reverse the meaning and anyone can see it's untrue. And anyway, if he really thought that this statement applied to my private diagnosis, PHSO would have **used** that statement to back up the NHS assessments and undermine my private diagnosis, instead of omitting it entirely!

“The assessments were carried out appropriately and appear to have been reasonably thorough”

What – **no** clinical tools used, **no** childhood history obtained, **no** interviewing of relatives, **no** autism-related questions, my own autism tests taken **dismissed**, autism traits **mislabelled** as anxiety - and that's an appropriate and thorough way to conduct an ASD assessment, not once, but **twice?!**

“The diagnoses were in the range of diagnoses that a reasonable clinician would make.”

Erm, hate to point out the obvious but **no diagnoses** were made! I was just told I wasn't autistic, told

all my autism traits were anxiety (*without any testing or formal diagnosis of such*) and given box-set of separate labels which were basically a breakdown of Asperger's traits. Not only that, but when I was privately diagnosed with ASD following comprehensive differential testing, it was documented that I had **no** mental ill-health and wasn't diagnosed with any. So this is further proof of their failings. And in any case, even if they had made diagnoses of their opinions, they would have been the wrong diagnoses and saying that a psychiatrist is medically able to **make** particular diagnoses doesn't mean they are necessarily the right ones (*do you know any doctors with a 100% success rate?*)!

“The assessments were undertaken at a specialist clinic for neuro psychiatry and not a general clinic”

And? So what. A psychiatrist is legally allowed to diagnose ASD and run an ASD clinic without having any qualifications, training or expertise in ASD. And having investigated the two NHS clinicians, I found that to be the case. They specialise in anxiety, tics, (*incidentally both terms that were used in my report...*) and neuroimaging (*yet despite the latter, failed to investigate EEG medical evidence I told them about, that correlated with autistic children*). This is the same false premise as to why the Trust funding panels themselves refused the reassessment, purely based on the alleged (*seemingly non-existent*) expertise of the two doctors. That's confirmation bias and professional defensiveness and PHSO's Behrens is [on record](#) as criticising the NHS for **“giving primacy to professional clinicians”**.

Note: in a letter to me dated 30.4.15 PHSOs Annette John stated (*about PHSO – wrongly – ruling my complaint as out-of-time*): **“Whilst we do not consider that our decision in September 2013 was unreasonable, given our approach to the application of the time limit at that time, and the fact that about four years had passed since the Trust carried out the assessments. However, we now take a more flexible approach, and we accept that it is quite possible that, had we been considering your complaint now, we might have decided to investigate it.”** The first sentence is irrelevant because she entirely ignored that the **documentary evidence** that my awareness of the problem was within the 12 months timescale (*awareness was in the latter part of 2012*) was completely disregarded by the case worker (*and this evidence was further backed up by written information PHSO received from the Trust itself*) and that the NHS had considered my complaint before I came to PHSO, clearly recognising it was within the 12 months deadline, in accordance with the **same rule which they also have**.

Annette John further said about the adviser's statements: **“In light of this we obtained the advice of an experienced consultant, who looked at the relevant records [no mention of which records these were and I know PHSO don't send advisers all relevant information] in order to provide an impartial view of the care you received. He told us that the consultants involved in your assessments were appropriately qualified [this much is true legally, even if it doesn't automatically equal him having experience and expertise in ASD] and that the assessments were carried out appropriately [totally untrue, see paragraph below]. He said the assessments appeared to have been reasonably thorough [totally untrue, see comment below] and the diagnoses were in the range of diagnoses that a reasonable clinician would make [irrelevant because in my case they were misdiagnoses, further comprehensively proven by my private diagnosis evidencing I was tested for multiple other conditions and found not to have any of them].”**

These are staggering statements considering both NHS doctors failed to follow multiple elements of basic [BMJ step-by-step guidance](#)* (*a copy of which was sourced from BMJ and provided to PHSO*) or an equivalent acceptable practice from a reputable source, but if NHS Guidance for this condition had been in place in 2009 they would have been categorically demonstrable to have fallen shockingly short of acceptable practice. This clinical adviser's statement is therefore unbelievable considering

the failures and omissions in the processes of both assessments and the dismissive way in which I was treated during them. So this clinical advice was, despite being a 'suitably qualified opinion' (without any proof the psychiatrist had autism expertise or even training) and clearly solely defending the NHS in the way it's worded, shockingly deficient also.

*I also emailed PHSO on 14.10.18 with the following, which is a copy and paste of what NHS NICE emailed me:

*"The final scope (PDF document) for CG142 sets out what is and isn't covered by the guideline, and provides some background information about the condition and how it was diagnosed and managed (before CG142 was published). It includes a section titled 'Current practice' (see **section 3.2 on page 3** onwards) which might be helpful to refer to. **In particular, points 3.2. 1) to m)** discuss externally-produced guidance that existed before the NICE guideline was published.*

The NICE website features the NICE Evidence search which is a search engine that brings together high quality evidence from hundreds of trusted sources, and includes guidance, systematic reviews, evidence summaries and patient information. Sources include NICE, the British National Formulary, Clinical Knowledge Summaries, SIGN, the Cochrane Library and Royal Colleges, Social Care Online and GOV.UK. You might like to carry out a search for guidance relating to autism in adults. It's possible to filter the search by date range. I've carried out a search for you, and it's brought up a publication by the National Autistic Society dated 1 January 2009 titled Supporting adults with autism: a good practice guide for NHS and local authorities."

In the first link NICE supplied, it says this: "**3.2 (e): "People may be wrongly diagnosed as having a mental illness when they have features of an autistic spectrum condition" and "Misdiagnosis can lead to delays in receiving the necessary care and support."** (try a delay of ten years!!!) .