

# THE MORECAMBE BAY INVESTIGATION

Chaired by Dr Bill Kirkup CBE

Dame Julie Mellor  
Parliamentary & Health Service Ombudsman  
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6<sup>th</sup> January 2014

Dear Dame Julie,

## DOCUMENTS AND EVIDENCE REQUIRED BY THE MORECAMBE BAY INVESTIGATION

The Chairman of the Morecambe Bay Investigation, Dr Bill Kirkup's letter of 17<sup>th</sup> October 2013 refers.

The Investigation is now collecting evidence in respect of its terms of reference.

This letter sets out the evidence required from The Parliamentary and Health Services Ombudsman. Further requests may be made at a later date.

The Investigation's Documents and Evidence Manager (DEM), Paul Roberts, or the Assistant Documents and Evidence Manager (ADEM) [REDACTED] will be your principle points of contact in relation to evidence management.

The Investigation would prefer to receive evidence electronically in one of the following formats:

- Searchable PDF
- Word
- Excel

Should this not be possible, please contact Paul or [REDACTED] to discuss alternative ways in which the evidence can be made available to the Investigation.

### Management of evidence by the Investigation

The Investigation recognises that the Parliamentary and Health Services Ombudsman will be concerned to know how material it is being asked to provide to the Investigation will be managed. It will therefore be helpful for you to know that

material sought by and supplied to the Morecambe Bay Investigation from interested organisations and the families of those involved will be viewed and accessed by Investigation staff and the Investigation Panel only.

All Investigation staff, including the Panel, will view the material via a secure internet based database to which access will be controlled by the Investigation's Documents and Evidence Management Team and all Investigation personnel, including Panel members, are required to sign and adhere to the terms of a confidentiality undertaking.

Material and/or documents supplied to the Investigation will be collected from, or derived from, official files that are the property of interested organisations and/or individuals and will be considered by the Investigation as "working papers".

Working papers will be either returned to the relevant interested organisation/family at the end of the Investigation or destroyed by the Investigation and a record of all document destruction will be retained.

The Investigation has applied to the Information Commissioner for Data Protection Act Registration and fully understands its responsibilities holding evidence supplied by interested organisations.

Material and/or documents supplied to and considered by the Investigation will not be provided or shown to any witness in advance of their attendance, by the Investigation. Witnesses will be advised in advance of their attendance what specific topics or areas the Panel wish to ask them about and which of the Investigations specific term(s) of reference they are being invited to provide evidence in respect of.

Should any witness wish to be reacquainted with any material and/or document(s) prior to attending the Investigation for an interview or to give evidence, they will be advised by the Investigation to liaise with their employer, or former employer, to make any necessary arrangements for them to undertake any such preparation.

I trust that being made aware at this early stage of the protocol the Investigation has adopted regarding document management will assist The Parliamentary and Health Services Ombudsman in providing material as swiftly as possible.

The evidence required for the Investigation from The Parliamentary and Health Services Ombudsman, is set out at Annex A, and should be submitted to the Investigation **within 21 working days** of the date of this letter.

Once the evidence has been examined, the Chairman will decide who oral evidence should be heard from. Can I remind you that it would be helpful, even at this early stage, if you would advise your staff accordingly and if you would also make contact with any staff member who has retired or left your organisation. To ensure the smooth running of the Investigation it will be important to ensure we have up to date contact details for those who may be asked to give oral evidence.

If you have any further queries regarding the evidence being requested, please contact:

Paul Roberts: T: 01772 536401 E: [paul.roberts@mbinvestigation.org](mailto:paul.roberts@mbinvestigation.org)

[REDACTED] T: 01772 536390 E: [REDACTED]@mbinvestigation.org

Yours sincerely,

[REDACTED]  
OONAGH MCINTOSH  
SECRETARY TO THE INVESTIGATION

CC [REDACTED] - OMBUDSMAN'S CASEWORK MANAGER

## Annex A

1. Any information provided to the PHSO to support their investigation into concerns raised at the Trust from any relevant organisation or individual.
2. Any information to demonstrate the Trust Board's actions in response to relevant investigations published by the Parliamentary and Health Service Ombudsman.

3. All correspondence between PHSO and:

- any member of the public who wrote to PHSO
- advice given to ministers and the senior officials in DH and regulatory bodies;
- any correspondence regarding the standard of maternal and neonatal care, the number of maternal and neonatal deaths or injuries sustained at the Trust, or complaints about care and the management of the Trust, between DH and:
  - The Trust
  - Cumbria Primary Care Trust (PCT), North Lancashire PCT and its predecessor PCTs (Morecambe Bay PCT, Fylde PCT and Wyre PCT)
  - North West Strategic Health Authority
  - NHS Commissioning Board Special Health Authority
  - NHS Commissioning Board
  - NHS England
  - Monitor
  - The Care Quality Commission (or its predecessor the Commission for Healthcare Audit and Inspection)
  - The Parliamentary and Health Services Ombudsman
  - The Health and Safety Executive
  - The General Medical Council
  - The Nursing and Midwifery Council
  - Cumbria Constabulary

regarding the standard of maternity and neonatal care at the Trust, the number of maternal and neonatal deaths/injuries sustained at The Trust, and complaints about care and the management at the Trust.

4. Any other information that you consider relevant to the Investigation in meeting its terms of reference.

Please contact:



Parliamentary  
and Health Service  
Ombudsman

In Confidence  
Dr Bill Kirkup  
Chair  
The Morecambe Bay Investigation  
Third Floor - Park Hotel  
East Cliff  
Preston  
PR1 3JT

6 January 2014

Dear Dr Kirkup

Thank you for your letter dated 9 December.

You have communicated that you are looking at the decision by us to defer a decision on the proposal put forward by [REDACTED] to investigate certain aspects of a complaint made by James Titcombe. You have asked for clarification as to whether it was customary or exceptional for the PHSO's Assessment Panel to reject, or defer, proposals to investigate that were made by caseworkers.

As you know, I am relatively new to the organisation and so I have very limited experience of the process that was followed when cases were put to Assessment Panels. However, I understand that it was not unusual for the Panel to disagree with a caseworker's recommendation. In many cases, such as this one, the Panel deferred the case pending further information. In other cases, the Panel would decide to decline the complaint for investigation following a discussion of a proposal to investigate and, in others, the Panel would decide to investigate a complaint that the caseworker felt should be declined.

You have asked if we are able to supply some statistical evidence to support our response. The way in which our casework management system was set up allowed us to record when a case was put to the Assessment Panel and what the outcome of the Panel was. However, we did not record the proposal put to the Panel electronically. Therefore, although our system would have recorded the outcome of the discussion it would not be possible to see what the original proposal was (and therefore whether or not it was different to the decision made) without reviewing the original paperwork.



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Furthermore, at the time under our retention and disposal policy both paper and electronic casefiles were routinely destroyed 14 months after the final correspondence on the case. This means that, although we still hold the records of some cases that were put to the Panel and deferred (such as Mr Titcombe's) we would not be able to provide you with an accurate number as a large number of these cases have now been destroyed.

I am sorry we cannot provide more detail. However, if there is any further information we can provide, please do not hesitate to contact me.

Yours sincerely



Mick Martin  
Managing Director

Please contact:

In Confidence  
Dr Bill Kirkup  
Chair  
The Morecambe Bay Investigation  
Third Floor - Park Hotel  
East Cliff  
Preston  
PR1 3JT



Parliamentary  
and Health Service  
Ombudsman

26 March 2014

Dear Dr Kirkup

I write further to our meeting on 26 February 2014. We found the meeting very helpful and hope you also thought it was useful. As I said when we met, we are keen to fully co-operate with you and be as helpful as we can to your investigation.

As you know in December 2013 we published three reports of complaints we investigated about the North West Strategic Health Authority which related to events at the Trust. You are also aware that in February 2014 we published four reports covering five complaints made to us about the Trust. We published and laid before Parliament these reports, partly because they contain documents and evidence relevant to your investigation which we wanted to be taken into account. In these reports we made significant recommendations including:

- o Changes to Midwifery supervision and regulation to reduce risks to Mothers and babies.
- o The need for more openness and transparency in the way hospitals and the wider health and social care system deal with complaints.
- o Highlighting the defensive culture in the way complaints are dealt with by health providers and how this needs to change
- o The need for all service providers to recognise the importance of independent investigations, when things go wrong which look at the root cause of the complaint and the role of human factors such as people and the organisation's culture.

When you wrote to us in January you sent us a list of information that you asked us to provide. We are pleased to be able say that most of the information you have requested can be obtained from other organisations. For example, you have requested correspondence between us and the Care Quality Commission that relates to complaints made about the Trust. All of this information is held by the CQC and so can be provided by



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them. The same principle applies to the other organisations listed in your Annex, for example, the Nursing and Midwifery Council.

The same principle also applies to point 1 and 2 of your request. You have asked for '*Any information provided to the PHSO to support their investigation into concerns raised at the Trust from any relevant organisation or individual*' and '*Any information to demonstrate the Trust Board's actions in response to relevant investigations published by the Parliamentary and Health Service Ombudsman.*'

In fact, there is only one exception to this and that is your request for any correspondence we have received from members of the public relating to the Trust. Data protection considerations apply to these sorts of communications. However, if it would be helpful, we are happy to go through our records and proactively contact the members of the public who have complained to us about the Trust in the period covering your investigation and ask them if they are happy for us to send their details to you. Please let us know if you think this would be helpful.

When we met you asked if we could specifically explain the restrictions imposed on us regarding sharing information by our legislation and any key differences between the Parliamentary Commissioner Act 1967 and the Health Service Commissioners Act 1993. For ease of reference, I have attached this as an Annex.

As I said when we met, we do want to be as helpful to your investigation as we can be and if, at any point, you think a further meeting or discussion would be useful then please do not hesitate to contact me.

Yours sincerely

Mick Martin  
Managing Director



## **Annex 1 - The Parliamentary Commissioner Act 1967 and the Health Service Commissioners Act 1993**

Our legislation only allows us to share information in very limited circumstances. This is because we are required to conduct our investigations in private and because we have very broad powers to obtain information. Both the Parliamentary Commissioner Act 1967 and the Health Service Commissioners Act 1993 give us the power of the High Court to obtain information during or for the purposes of our investigations and our ability to require the production of even legally privileged information in many cases gives us greater powers than the High Court. Many bodies are excluded from relying on any statutory obligations, even obligations of secrecy, or powers to withhold information when it comes to providing us with information. Much of the information we receive will of course be personal information, in health cases usually sensitive personal information, but we may also see commercially or politically sensitive information.

In light of our broad powers, bodies will often supply us with all the information they hold which may be relevant to our investigation for us to determine to what extent it is so relevant.

To counterbalance our very broad power to obtain information, both Acts require that we protect that information and release it only in strict compliance with the exceptions set out in the relevant sections of the Acts. In both Acts we may release information for the purposes of the investigation and the report, and for some joint investigations with other Ombudsmen, as well as for proceedings for an offence under the Official Secrets Acts or for perjury arising in the course of the investigation, or for any proceedings brought by the Ombudsman for the offences of obstruction of her investigation and contempt of court. There are also specific powers to release information to the Information Commissioner for the exercise of his functions.

In the Health Service Commissioners Act 1993 only there is an additional power to release information to the effect that any person is likely to constitute a threat to the health or safety of patients, in which case we may disclose the information to any persons to whom we think it should be disclosed for those purposes. We will generally release information about individual clinicians to their professional bodies, but we might also release information to the police or to employers. If we decide to do this we must inform the person we think is likely to constitute a threat that we have disclosed the information and to whom we have disclosed it, and we must also inform anyone who provided us with the information that we have disclosed it.

Case law has established that this statutory bar on disclosure attaches also to any information we supply to the parties to the complaint, or third parties, during or for the

purposes of the investigation, including draft reports. It does not attach to the final report.

We will disclose to individual complainants any information on their file which was material to our decision-making, i.e. information on which we relied in coming to our decision or which may have influenced us, as that is released for the purposes of the investigation and report. We do not and cannot release other non-material information supplied to us.

# THE MORECAMBE BAY INVESTIGATION

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Parliamentary and Health Service Ombudsman  
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3 April 2014

Dear Mr Martin,

Thank you for your letter of 26 March in which you explain the restrictions imposed on you regarding sharing information, by the Parliamentary Commissioner Act 1967 and the Health Service Commissioners Act 1993. I appreciate the constraints the Ombudsman operates within and the difficulties you have releasing material to the Morecambe Bay Investigation. I am grateful that you have pointed the Investigation in the direction of other interested organisations from whom the Investigation will seek to obtain copies of exchanges between the Ombudsman and them.

I also understand that the Ombudsman cannot release correspondence from individual complainants, other than the material that is already in the public domain having been referred to in Reports that the Ombudsman has published.

In order to fulfil our remit, however, the Morecambe Bay Investigation does wish to see all internal documents from the Parliamentary Health Service Ombudsman (including e-mail exchanges, minutes of meetings and correspondence) that relate to why the Ombudsman's office took the decision not to investigate earlier the complaints made to it by James Titcombe. This would not extend to any information supplied by Mr Titcombe, which we have in any case received directly from him.

In addition the Investigation requires confirmation from the Ombudsman as to whether it can interview the previous Ombudsman, Ann Abraham and those staff who were involved in reaching the decision not to conduct an investigation. As the Ombudsman has referred to these matters in the most recent Reports you have published regarding complaints made about the Trust, I consider they are pertinent and relevant to my Investigation.

It would be helpful to have a response to this letter and answers to the questions I have raised by close of play on Thursday 10 April.

Should you have any queries please do not hesitate to contact Oonagh McIntosh on 01772 536381.

Yours sincerely,

**BILL KIRKUP CBE**

Telephone: 01772 536376  
Email: [correspondence@mbinvestigation.org](mailto:correspondence@mbinvestigation.org)

*Independent investigation into the management, delivery and outcomes of care provided by the Maternity and Neonatal services of University Hospitals of Morecambe Bay Trust from January 2004 – June 2013*

Please contact:

Dr Bill Kirkup  
Chair, The Morecambe Bay Investigation  
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Lancashire  
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Parliamentary  
and Health Service  
Ombudsman

9 April 2014

Dear Dr Kirkup

Thank you for your letter dated 3 April 2014. We are pleased that we have been able to ensure that your investigation has access to everything that you have asked us for to date. We remain committed to helping your investigation in whatever way we can.

In your letter you have requested all internal documents (including email exchanges, minutes of meetings and correspondence) that relate to *'why the Ombudsman's office took the decision not to investigate earlier the complaints made to it by James Titcombe'*.

We will begin looking through our files and putting together the information you have asked for. We anticipate being able to provide the information requested and will send it to you as soon as we can. We hope that we will be able to provide most of the information you have asked for before the Easter break.

You have also asked us to confirm whether you can interview the previous Ombudsman, Ann Abraham, and *'those staff who were involved in reaching the decision not to conduct an investigation'*. When we send you the paperwork you have requested we think it will demonstrate that the decision that was taken not to conduct an investigation was made by Ann Abraham. As you know, Ann Abraham retired in December 2011 so we will send her a copy of your letter so that she can respond herself to your request for an interview.

I hope you find this helpful. We will send you the information you have asked for as soon as we can.

Yours sincerely

Mick Martin  
Managing Director  
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