

Parliamentary and Health Service Ombudsman

PROCUREMENT INVESTIGATION September 2014

Report by the Comptroller and Auditor General

This report has been prepared under Section 7 of the National Audit Act 1983.

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National Audit Office

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Introduction

In early 2012 the Parliamentary and Health Service Ombudsman (PHSO) began a fundamental change programme. The new Ombudsman Dame Julie Mellor, DBE, instigated the programme to support her overall vision for the PHSO to deliver more impact for more people. The programme led to the publication of the PHSO Strategic Plan 2013-18. This Plan described the ambition to make it easier for people to find the service, to investigate more complaints, to work with others to improve public services, and to drive improvements in the complaints system. Supporting this ambition was an aim to develop the PHSO internally so that it could deliver the ambition effectively and efficiently.

The PHSO procured services from external organisations and consultants to assist with the design of the Strategic Plan, assess the ways that PHSO needed to change internally and help support the organisation's development in making that change.

Background to our review

The Audit Committee, as part of its programme of work for 2013-14, asked the Internal Audit provider to review the costs associated with the change programme. Internal Audit performed this work in the Autumn of 2013, focusing on a small number of procurements specific to the change programme. The National Audit Office (NAO) reviews the work of Internal Audit in order to increase our knowledge of the business and to identify any previously unknown risks that need to be addressed as part of our audit approach. In reviewing Internal Audit's work, we noted their concerns regarding the management of conflicts of interest in procuring services during this transitional period. We judged that these concerns gave rise to the risk that procurements had been unduly influenced. We determined that in order to discharge our responsibilities to conclude on the regular and proper use of public funds by PHSO, we needed to investigate those procurements in more depth.

The scope of our work

We identified four suppliers of programme-related services to PHSO, three that Internal Audit had looked at and one added following our initial inquiries. For each we reviewed all available procurement, contract management and payment documentation. We interviewed key PHSO staff including senior management and those involved in procurements and contract management, and we interviewed the suppliers.

The suppliers reviewed

1. PA Consulting was contracted to help develop the Strategic Plan and design the associated architecture and governance at a cost of £426,332. They provided further services to assist with implementing the Plan at a cost of £390,082.
2. Rosemary Jackson Consulting Limited was contracted to provide coaching to the senior leadership in PHSO, and subsequently to assist with development of the new Board. Costs to December 2013 are £70,035.
3. BritainThinks Limited performed a Diagnostic Project supporting the Strategy Refresh with a cost to PHSO of £46,560 and a Deliberative Research Project into complaints handling in the NHS with a cost of £61,572.
4. Conroy Consulting Limited was contracted to provide specific assessment support for the recruitment of senior management within PHSO. The total costs were £44,286.

Detailed information and commentary on the procurement of services from these organisations is given in the Appendix.

Executive summary

Our Findings

Our work can be categorised under four broad headings:

1. On **conflicts of interest (Part one)**, we examined the relationships between PHSO staff and the suppliers. We did not find any evidence that any actual conflicts of interest existed. Accordingly, we did not find evidence that procurements had been unduly influenced to favour one supplier over another. We also reviewed how suppliers were sourced, and how potential interests were identified and managed. The Ombudsman felt it essential to take a strong personal interest in the procurements, drawing on her business experience to identify potential suppliers. Although no conflicts existed, prior relationships gave rise to potential conflicts of interest which were not well managed. In the absence of firm procedures, ad-hoc arrangements for managing interests were often made, but these were rarely proportionate to the risk that procurements might be seen to be unduly influenced. As a result the perception risk remained; it was only through doing this work that we were able to satisfy ourselves that the risk had not materialised.
2. On **procurement practices (Part two)**, we examined the specified procurements for compliance with the PHSO Procurement Code, and identified a number of areas where this was lacking. Work began in advance of business cases or procurement documentation being prepared. Business cases underestimated requirements leading to the risk that inappropriate procurement routes are taken. Procurement documentation, such as tender evaluations, were not always an accurate record of actual events and hence gave a false impression of what actions had been taken. Contracts had some deficiencies, including no termination facility, and ambiguity over expenses payable.
3. On reviewing **contract management (Part three)**, contracts did not specify how the relationship would be managed. Contract management was often ad-hoc and the quality of the management was therefore dependent on the individual rather than due process. The expected quarterly reviews of consultancy contracts did not take place.
4. We don't conclude on **value for money (Part four)** in this report as this has not been the focus of our work. At face value, PHSO has at times incurred expenditure on consultants to assist with transition to an extent that looks hard to justify. We did not find arrangements in place for assessing the benefits realised from the expenditure incurred and hence whether value for money was being achieved. Such assessments would, however, need to look at spending in context. Whether some of the expenditure we have examined provides value for money can only be answered by assessing the achievements of the organisation over a period of time.

Overall conclusions

We found no evidence of material irregularity, or undue influence in procurements arising from conflicts of interest. Accordingly, we do not anticipate any undue threat to the audit opinion for 2013-14.

In relation to the procurement and management of transition expenditure examined as part of this review, the PHSO may be exposed to the criticism that it had not exercised the expected stewardship and governance over public funds.

PHSO has not yet considered fully how it will demonstrate whether the change programme has delivered value for money.

We make no specific recommendation as our work was focused on establishing facts. We note that the Ombudsman is taking action to address the weaknesses expressed in this report, with particular focus on improving procurement, strengthening the leadership team, and addressing the associated governance requirements. We note that these matters and the Ombudsman's actions to address them are disclosed in the Governance Statement which is presented to Parliament along with the accounts. The costs reported herein are the costs to PHSO and include VAT as they are not able to recover VAT.

Part One: Managing Interests

A conflict of interest can be defined as a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest will be unduly influenced by a secondary interest. A primary interest is typically a decision taken for the benefit of the organisation. A secondary interest is one that may result in other benefit, such as personal financial gain or gains for friends, family or associates. Interests therefore need to be identified and managed so that any perceived conflicts can be dealt with in an appropriate manner, for example by removing oneself from a decision. Conflict of interests, whether actual or perceived, if not properly managed leave an organisation open to accusations of a lack of transparency or, at worst, of wrongdoing or potential fraud.

It is to be expected that individuals appointed into senior positions will have many business contacts who may be potential suppliers to the organisation. It is normal practice for those individuals to use their contacts to identify such suppliers. This does, however, make the disclosure and management of perceived conflicts of interest even more important in order to minimise threats to reputational risk.

Interests of the Ombudsman were seen in each of the procurements identified. Her former employer PwC bid for the Strategic Plan contract. She identified several suppliers for the Diagnostic Project contract, with one of the lead consultants from the successful firm, BritainThinks, a former colleague from when they were directors in two organisations. The senior leadership coaching contract was awarded to Rosemary Jackson Consulting Limited a company run by a business colleague with whom the Ombudsman had briefly incorporated a company in the late 1990s. This company never traded. HR was consulted and agreed that this could be done under single tender action. The Behavioural Event Analysis element of the recruitment assessment contract was also awarded through single tender, to Conroy Consulting Limited; a company run by a former colleague from a previous employment.

Given the nature of the procurements, focusing on organisational strategy and development, it is not surprising that the Ombudsman wished to take a close interest. Utilising your business network can be a powerful force for good in any organisation. But it does introduce the risk that decisions are perceived to be made with a secondary interest in mind. This is particularly true when a supplier is sourced and appointed by single tender action, such as with the senior leadership coaching contract.

Such perception risk is usually managed through established and detailed protocols for the disclosure of interests, the consideration of whether these might be conflicts of interest, and for actions to be taken where a conflict of interest is identified. The PHSO Procurement Code does not contain such protocols, indeed we observed that the majority of PHSO guidance about conflicts relates to casework rather than procurement. We observed a lack of a real definition, advice or guidance in respect of both the declaration of and response to conflicts. This meant that these risks were perhaps underestimated and therefore appropriate safeguards were not in place.

Ad-hoc arrangements were made, both by those involved with the procurements and those with a central Procurement function. In June 2012, following some concerns raised by the then Deputy Chief Executive, a review of procurements was carried out by the Procurement Manager which identified some lessons that could be learned in terms of improving compliance with procurement process. This was an important contribution, for example making sure that evaluations were carried out independently. Significantly, however, it did not result in any amendments to the management of conflicts of interest. The Ombudsman informed us that she was not briefed on the findings from the review.

Part One: Managing Interests

In terms of the specific procurements, the following ad-hoc arrangements were made:

- On the Strategic Plan contract won by PA Consulting, the Ombudsman identified that with her former employer bidding, and her retention of a small financial interest, that she should remove herself from the bidding process. This was the correct action, and corresponds with the guidance provided to Accounting Officers in the Treasury document Managing Public Money.
- On the coaching contract awarded to Rosemary Jackson Consulting Limited, no interests were declared. For the development contract, both the Ombudsman and the Chief Operating Officer declared to the evaluation panel that they had worked with the supplier before, although the full nature of the interests were not declared. In the absence of any guidance, the panel and Ombudsman agreed that the Ombudsman could continue as part of the panel, but that she would not chair it and speak last.
On the Diagnostic Project won by BritainThinks, the Ombudsman's interests with the suppliers were not recorded. On the Deliberative
- Research Project with the same supplier, a prior business relationship was declared. Again, in the absence of any protocols the decision was taken that the Ombudsman would speak last at the evaluation panel.
On the element of the recruitment assessment contract awarded to Conroy Consulting Limited, the Ombudsman was not involved beyond a suggestion to try a particular supplier. That supplier was appointed on a single tender action.

Our work has enabled us to conclude that there was no evidence of actual conflicts of interests. We also did not observe any instances where a competitive procurement decision appeared to have been unduly influenced. We would note though that this conclusion could only be made after our detailed examination, and that on the basis of the actions taken and the decisions documented by the PHSO that it would find it difficult to robustly defend itself against the charge that interests played a part in decision making.

Excluding the Strategic Plan contract, where appropriate action was taken, the actions above were not sufficient to avoid the perception that procurement decisions could be seen to have been influenced by the existence of interests. We have identified that the declarations made were not complete. The declarations made, and actions taken, were not recorded. The strong personal involvement in both the sourcing of a supplier and the award of a contract requires particular care in handling to ensure that probity can be demonstrated. This is particularly true when the most senior official of an organisation is involved, as there may be a perception that others are likely to defer to the senior official's preferences.

We note that the Ombudsman has commissioned a fundamental review of procurement and has already identified a more robust protocol for identifying, considering and managing conflicts of interest. It is important that process supports, rather than stifles, good and agile decision making. Processes need to support the Ombudsman's position as Accounting Officer without necessarily restricting her ability to have an appropriate level of input to procurement decisions, particularly those affecting her Board or organisational strategy.

Part Two: Procurement Practices

The PHSO has an established procurement process, expressed in a Procurement Code. This is subject to regular review by senior officials within the organisation. It has also been examined by Internal Audit in the past. We reviewed the Procurement Code as part of this review and, apart from omissions regarding management of interests already referred to, it is a comprehensive expression of good practice.

Having good procurement processes only ensures sound procurement if they are complied with and not merely a “tick box” approach. Compliance with and application of the procurement process is not the sole responsibility of the Procurement team. Senior officers undertaking a procurement should be following the procedures and using them as a methodology to ensure that both the initial decision to undertake the procurement and the route followed is appropriate and the potential risks to the organisation are being adequately considered and addressed. The role of a central procurement team is to set the framework and advise the business on its interpretation and use.

Business Cases

The business case should be the key initiation document which brings together the justification for the need to procure the services or goods, the benefits that are to be derived from that supply, an estimate of the cost, and the planned procurement route. This document should of course be proportionate to the nature of the supply, the value and the timeframe. The approval of the business case should not be a routine matter but the point at which the final decision to proceed to formal procurement is made.

The business cases examined did not appear to be fulfilling this role. In three of the four cases examined there was a retrospective element to the business cases – the coaching contract, the Diagnostic Project and the recruitment assessment contract. In the coaching and recruitment contracts, work had already been supplied prior to a business case being drafted. For the Diagnostic Project, the business case was prepared alongside the contract award documentation.

We also noted a level of optimism bias in the costs in business cases. The original approved Strategic Plan business case was for £100k yet the successful bid was for over £400k and, as a result of contract extensions, in the end over £800k was spent with the supplier. The business case for the Behavioural Event Interviews started at £18,840 and ended up with a maximum budget of £54,840. Where requirements are underestimated, inadequate procurement routes can be taken – for example all work supplied by the recruitment assessment consultant was done on Purchase Order without competition.

It was not clear from business case amendments, prepared to bridge the gap between original and final requirements, what level of scrutiny was applied to these increases. They give the impression of being a formality rather than a fundamental part of the procurement process.

Tender Evaluation

Competitive procurements were found to be done in accordance with good practice and in accordance with the Procurement Code. The PHSO follows the traditional model of Invitation to Tender (ITT), tender evaluation, clarifications with bidders and contract award. Judgements and evaluations are recorded on the procurement files and available to scrutiny.

Part Two: Procurement Practices

One area of significant concern was the accuracy of documentation, particularly around the declarations of interests and the mitigating actions that were taken. We note in slide 6 the declarations that were made and the actions taken. We identified these through interviews with people who were on the panel. Given the level of corroboration, we are content that these are accurate recollections. However, these accounts are not in all instances consistent with the record of the discussion as documented on the tender evaluation report. For example, the tender evaluation document for the provision of coaching services to support the development of PHSO's Corporate Governance contract states that the Ombudsman chaired the panel following a declaration that she had worked with one of the bidders. We know this not to be the case; the Ombudsman did not chair the panel and spoke only after others had the opportunity to present their view.

Whilst seemingly a point of detail, this documentation is the formal evidence that protects the organisation from challenge by evidencing that proper process has been followed. The PHSO is currently unable to demonstrate this.

Contracting

Contracts entered into by PHSO follow a template, which broadly follows best practice. We did however observe some potential weaknesses in the way that contracts are written:

- Contracts do not have obvious termination clauses or notice periods. Thus, for example, a supplier is unable to easily withdraw from a contract once entered into.
- We observed a number of contracts with consultants where the right to reimbursement of expenses was either not expressed, or not expressed clearly. The contract with Rosemary Jackson Consulting Limited was ambiguous on expenses other than travel, leading to tensions over subsistence and other expenses, including claims for alcohol which were paid. The contract with PA Consulting just included an expenses cap, allowing the consultants to incur expenses without apparent scrutiny.

We also observed that contracts did not specify how they would be managed, of which more in part three.

Finally we noted in several cases an element of 'scope creep' once contracts were awarded. This manifested itself in two ways; a) increasing requirements once a contract was awarded, for example extending the Board development contract to include Leadership team development despite this not being in the initial requirements, and b) extending a contract beyond its initial scope through a variation. On this latter point, the further £390,082 spent with PA Consulting following the successful delivery of the Strategic Plan contract was done on a contract variation; from our review of the documentation it looks hard to justify that the implementation work was within the direct scope of the original contract. We note that in this case the Procurement team had raised the appropriate concerns, although these did not influence the outcomes.

Overall the PHSO has an appropriate procurement process, but there are weaknesses in its use. In particular, the failure to document the procurement processes and manage interests correctly exposes the organisation to questions over its stewardship of funds, and to the risk that unsuccessful bidders may challenge the fair conduct of a procurement process. We also observed that the channels of communication between finance and procurement, and senior managers, was not fully effective. The business could have done more to advise senior managers on required procedures, and senior managers could have done more to ensure that they were fully briefed.

Part Three: Contract Management

Well drafted and comprehensive contracts are a prerequisite for good contract management. Contracts should, in addition to the necessary legal elements, provide clarity as to how the contract is going to be managed, what the expectations are from both parties, the deliverables under the contract and how successful delivery will be judged. Where the contract is for the supply of services this is even more important as the deliveries and achievements can be less tangible and therefore less easy to confirm. Contracts should routinely set out the grounds under which they can be terminated by either party and the financial implications thereof. Financial provisions should be clear. Contracts should also specify how any disputes would be resolved.

Contract Management

In part two we discussed some areas in which contracts could be improved. Central to this is that contracts specified the deliverables but rarely the intermediate milestones and the criteria on which progress would be judged. Contracts did also not set out how the relationships between supplier and buyer would work, often a key factor in ensuring a successful relationship built on partnership working.

The absence of specified arrangements in contracts means that it is left to internal contract managers to improvise; the quality of this is then dependent on the ability of the individual rather than on specified / good practice. PHSO has been going through a period of considerable change and there has been a reliance on interim appointments in many of the senior posts. Changes in the incumbents of these positions has added to the variability of the contract management as the ultimate contract manager may not have been involved in the original procurement. Suppliers highlighted to us examples of both good and bad contract management, often in the same contract. For example the recruitment assessment consultant experienced two contract managers following completely different methods, the first manager being difficult and the later one following a much more collaborative style.

This has resulted in PHSO being seen as a difficult organisation to contract with. Three of the four suppliers experienced significant tensions in the relationship on a day to day level. Without specific protocols for relationship management or escalation for dispute resolution, these tensions were not well managed. This has caused some detriment for PHSO, for example the Diagnostic Project was finished early although it is now considered that the elements not performed would have been very valuable to the organisation.

Consultancy Reviews

The published PHSO Procurement Code has an expectation of regular three monthly reviews for consultancy contracts but we saw no evidence of any of these reviews taking place. We expected that these reviews would be linked to contract management including the possibility for termination by either party.

Part Four: Value for Money

There is an expectation that public organisations will utilise the funds they are granted from Parliament in a way that maximises value for money i.e. economically, efficiently and effectively. Accounting Officers have a duty to use the funds provided to them in a way that provides value for money as well as being able to demonstrate the regular and proper use of funds. There is a particular focus on the use of funds which are not spent on front-line activities, as across the public sector organisations come under pressure to reduce the proportion of spend on such activities considered as overheads or support functions. All of the costs examined as part of this review qualify as overhead or support costs.

Value for money is a judgement. Business Cases should consider the overall value to the organisation of the activity being procured and what it would be reasonable to pay for that added value. It should also set out how the value from the activity is to be assessed and how it will be reviewed during and after the completion of the contract. As noted in parts two and three of this report, we did not observe that value for money considerations were included within the procurement processes. Matters were focused on affordability and deliverables, or outputs. Both of which are of course very important, but considerable sums have been committed to organisational development and it is important that the PHSO is able to demonstrate, when challenged, what it has got for its money.

We don't provide an overall conclusion on value for money in this report as this has not been the focus of our work. 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.

We do, however, have a number of relevant observations:

- The use of consultants where specific skills are needed is an important option for an organisation. However, PHSO has at times continued to engage consultants beyond a point where options for recruiting those skills to staff through permanent or interim appointments should have been considered. From the procurements we looked at, one consultant was engaged for almost eight months at a cost of over £250,000 after the original contract was delivered. PHSO has not been able to demonstrate the value obtained from this continuing engagement compared with a options for recruitment; accordingly it looks hard to justify from a value for money perspective.
- We did not see a focus on measuring the benefits obtained from the investments made. As an organisation spending public money, it is important that the PHSO does this so that it can demonstrate how it is discharging its obligation to obtain value for money for the public money it spends. This is particularly important where the investment is in something intangible, such as the contract for Board development and coaching, where the financial focus is on the budget rather than the value achieved.
- There has been a lot of turnover at senior levels with a lot of interim appointments. As well as making running the organisation more difficult this results in higher employment costs and an increase in recruitment and other fees, for example fees payable when interim arrangements come to an end.

Procurement Summary: PA Consulting Limited

PA Consulting were contracted to provide services supporting the Strategy Refresh. The original contract was for the development of a strategic plan with a planned second phase for the development of the associated architecture and governance. They were awarded the original contract in June 2012 and completed the work in December 2012 at a total cost of £426,332. The consultants were re-engaged for a further 8 months to assist PHSO with implementing the plan at a further cost of £390,082.

TIMELINE		COMMENTARY
Strategic Plan		
June 12	Business Case	<ul style="list-style-type: none"> Business Case prepared and signed off by Executive Team. Business Case stated that the likely total cost of the project was £100,000.
June 12	ITT issued	<ul style="list-style-type: none"> ITT issued to ten suppliers from the Government Procurement Service list. Four potential suppliers submitted tenders.
July 12	Evaluation of tenders	<ul style="list-style-type: none"> One of the bidders was Pricewaterhousecoopers (PwC). As a former partner and still receiving a small financial benefit from PwC, the Ombudsman declared a potential conflict of interest and removed herself from the evaluation of the bids. Her involvement beyond this point related only to ensuring that the specification would meet her requirements. A full competitive tender evaluation process was carried out.
July 12	Contract awarded	<ul style="list-style-type: none"> PA Consulting were the clear winners of the evaluation and awarded the contract. As requested in the ITT, a fixed fee for an initial scoping phase was agreed (£12,000 including VAT) and an indication of likely costs to complete provided. PA Consulting's bid indicated that around £400,000 would be required to complete.
Aug 12	Business Case Amendment 1	<ul style="list-style-type: none"> PA Consulting delivered the scoping deliverable – a Project Initiation Document – specifying the needs of the wider project and confirming that the further costs to complete would be £407,172 including VAT. There is no indication from the documentation that questions were asked about the actual costs being over four times the amounts requested in the original Business Case. The Ombudsman advised the Executive that the original £100k was unrealistic, based on her experience as a consultant. Expenses were stated to be payable at no more than two per cent of fees. This was not specified further and individual expenses were not queried. We also saw no evidence that the two per cent was monitored.
Sept – Dec 12	Work performed and completed	<ul style="list-style-type: none"> The contract specified the deliverables, regarding the development of the Strategic Plan, high level organisational architecture and governance arrangements, and these were duly provided. The consultants provided detailed handover notes to assist PHSO with implementation of the Plan. The project was completed for the quoted cost plus expenses. There was nothing in the contract to assess the value provided for this amount or to measure the benefits provided, although clearly the PHSO valued and adopted the plan.

Procurement Summary: PA Consulting Limited

TIMELINE		COMMENTARY
Implementation		
Jan 13	Business Case Amendment 2	<ul style="list-style-type: none"> PHSO wished to secure support to assist with the implementation of the strategic plan. PHSO were keen to retain the knowledge of the key individuals from the consultants over this period. The services requested, based on daily rates, amounted to £143,430 including VAT. The proposal was that this arrangement would be in place until March 2013. The documentation suggested that this would be a short term arrangement whilst a competitive procurement was run for ongoing support. This procurement never took place. The consultants accepted the work on the basis that responsibility for deliverables were retained within PHSO. Accordingly, we interpret that the consultants were being used as proxies for staff members. The contract was silent on contract management, but at the request of PHSO Procurement team clear deliverables and milestones were incorporated. In addition to daily rates, expenses of five per cent of fees were allowed. As before, this was not queried or monitored. In particular, the jump from two to five per cent does not appear to have been queried.
Mar 13	Business Case Amendment 3	<ul style="list-style-type: none"> A further extension to retain the services of the key individuals from the consultants. Specification stated that this additional support was to continue the implementation and design of the lower levels of organisational structures and processes. This support would cost a further £240,564 including VAT. Expenses were as before and the services were intended to run until September 2013. The PHSO Procurement team issued a memorandum setting out their concerns over the continued use of these consultants without competition. The Procurement team felt that the organisation were in potential breach of EU Regulations. This memorandum is in the file but we found no evidence that this was taken into account as part of the decision to proceed.
May - Sep 13	Business Case Amendment 4,5	<ul style="list-style-type: none"> Amendments to a) re-profile the budget with no overall financial impact, and b) provide financial cover for the expenses for amendment 3, which amounted to £12,678 including VAT.
	Overall Comments	<ul style="list-style-type: none"> From January 2013 the consultants were acting in roles commensurate with PHSO employees. One particular consultant worked at PHSO roughly four days per week over nearly eight months, at a cost of over £250,000. We did not see any consideration of whether this provided value for money, or whether the skills and knowledge required could have been recruited either through permanent or interim appointments. We note that the PHSO Procurement Code requires quarterly reviews of consultancy contracts. These did not take place.

Procurement Summary: Rosemary Jackson Consulting Limited

Rosemary Jackson Consulting Limited was contracted to provide coaching services to the Ombudsman and the Chief Operating Officer on a single tender action. Costs under this contract amounted to £27,533 including VAT and expenses. A second contract for the provision of coaching services to support the development of PHSO's Corporate Governance was awarded following a competitive tender process. This is a contract to provide support over a three year period. Costs to December 2013 under this contract amounted to £36,841. An additional piece of work was contracted for on a single tender action relating to Leadership Team development costing £5,661.

TIMELINE		COMMENTARY
Coaching Contract		
Oct 12	Work started	<ul style="list-style-type: none"> The Ombudsman secured the services of the consultant as an executive coach both to her and to the Chief Operating Officer, covering both leadership coaching and ways of working together. The Ombudsman has used this consultant twice before as an executive coach, at the Equal Opportunities Commission in 2002 and at British Gas prior to that. During a stint where the Ombudsman ran her own business in the late 1990s, JM Associates, she had engaged the consultant on several client projects. In 1998 the Ombudsman and the consultant decided to form a company together, registered it at Companies House as Jackson Mellor Limited. This company never traded; twelve weeks after formation Julie Mellor accepted a position as Chair of the Equal Opportunities Commission (EOC) and withdrew from the company. As Chair of the EOC, the Ombudsman used the consultant to support EOC Board development up to 2002. We understand that this was the last time they worked together prior to PHSO.
Nov 12	Business Case and Contract	<ul style="list-style-type: none"> A business case for the coaching contract was prepared although this was after the consultant had provided several sessions. The PHSO Procurement team identified comparative rates from alternative suppliers to benchmark the rates being charged. These rates were not expensive. The business case did not include any declarations of the prior relationship. We understand that the Ombudsman discussed her requirements and preferred coach with HR and Procurement. A contract was issued retrospectively.
Contract for the provision of coaching services to support the development of PHSO's Corporate Governance		
Mar 13	Business case and ITT issued	<ul style="list-style-type: none"> Business Case for the Board Development work approved. With the change from an Advisory Board to a Unitary Board, with a majority of new members, the Ombudsman identified the need for Board development work to focus on cohesion, governance and ways of working together. A number of potential suppliers were identified, including the executive coach who also submitted a tender. A competitive tendering process was undertaken.

Procurement Summary: Rosemary Jackson Consulting Limited

Development Contract		
Apr 13	Tender evaluation	<ul style="list-style-type: none"> The evaluation documentation states that the Ombudsman had worked with the executive coach before, as had the Chief Operating Officer. It further states that there were no conflicts of interest and that the Ombudsman chaired the evaluation panel. This documentation is not an accurate record, based on our review. The Ombudsman recalls saying that she knew some of the other bidders, which is not documented. As a result of her interests, she agreed with the panel members that she would not chair it, a situation confirmed by other panel members. The Ombudsman also chose to give her views after all others had spoken. None of these matters are documented on the evaluation document which therefore gives a false account of events. It is also an indication that panel members were making ad-hoc arrangements in an attempt to manage the risk of perceived undue influence, in the absence of firm advice or guidance. The declaration by the Ombudsman that she had worked with this particular consultant before was taken to refer to the existing coaching contract by other panel members. Full declarations were therefore not given. However, the decision to award the contract to this consultant was unanimous. Panel members felt that they had not been influenced, and that their decision would have stood regardless of further disclosures.
July 13	Contract signed	<ul style="list-style-type: none"> The contract did not include termination or notice clauses. The supplier commented that the PHSO tried to add requirements into the contract after it had been awarded, related to leadership team development work. The supplier resisted these additions. The extent to which allowable expenses were set out was not comprehensive. This has caused some tension between PHSO and supplier. PHSO staff have taken the view that if it is not in the contract it is not payable. The supplier feels that reasonable requests for subsistence are not being respected, and that PHSO's stance has been overly bureaucratic.
Jul - Sep 13	Variations to the Board Development Contract	<ul style="list-style-type: none"> Contract varied to add integration work between the Boards of the Local Government Ombudsman (LGO) and PHSO – the costs relating to this variation amounted to £7,200 plus expenses of which LGO are to meet £2,000. Business Case approved 16 September for support at event on 18 and 19 September, through a Single Tender Action amounting to, including VAT and expenses, £5,661.

Procurement Summary: BritainThinks

BritainThinks were awarded two contracts during the period under consideration. Both of them were by way of formal tender and competitive process. The first was for a Diagnostic Project in support of PHSO's Strategy Refresh at a cost to PHSO of £46,560. The second was for Deliberative Research into Complaints Handling in the NHS with a cost to PHSO of £61,572.

There was no clear assessment as to the value obtained from either of these contracts although there is clear evidence that this helped shape PHSO thinking. There is some regret that the Diagnostic Project was not completed as originally anticipated.

TIMELINE		COMMENTARY
Contract 1: Diagnostic Project		
Jan 12	Invitation to Tender (ITT) issued	<ul style="list-style-type: none"> • Need for project identified by Ombudsman. ITT issued to four potential suppliers who had been identified by the Ombudsman as likely to have the necessary skills to carry out the project to support the strategy refresh • Two of the potential suppliers submitted tenders for the work • A competitive procurement process was followed • A Business Case was not in place prior to the ITT being issued
Feb 12	Tender evaluation	<ul style="list-style-type: none"> • The Ombudsman had prior business relationships with consultants from both bidders. The lead consultant from BritainThinks had been a Commissioner at the Equal Opportunities Commission (EOC) when the Ombudsman was the Chair. This individual had also in the past been a fellow Board member of the Ombudsman at the Green Alliance. The Ombudsman recalls declaring the relationship from the EOC during the tender process but this is not recorded in the evaluation documentation and it is not clear what action was taken as a result. • BritainThinks was the successful bidder and awarded the contract. The evaluation document clearly shows BritainThinks as the winner and this is the recollection of those present that we have spoken to. • The Business Case was prepared at the same time that the contract award recommendation was made.
Mar – July 12	Diagnostic Project undertaken	<ul style="list-style-type: none"> • Contract did not say how it was to be managed or what the deliverables were. • Difficulties experienced in the contract management, in part due to the inexperience of a member of staff at PHSO. The supplier expressed some frustration that the PHSO team did not have a good understanding of the requirements. The tensions during the delivery phase between PHSO staff and the supplier led to the project being terminated before the anticipated second phase
Contract 2: Deliberative Research Project		
Mar 13	ITT issued	<ul style="list-style-type: none"> • Need for project identified by Ombudsman. ITT issued to five potential suppliers for the Deliberative Research project. Two potential suppliers tendered for this work: the same two as for the previous project • The Business Case was approved on the same date as the ITT was issued • A competitive process was followed

Procurement Summary: BritainThinks

TIMELINE		COMMENTARY
Contract 2: Deliberative Research Project continued		
Apr 13	Tender evaluation	<ul style="list-style-type: none"> • There was a full tender evaluation process • The Ombudsman was not part of the evaluation team however she did attend the clarification meetings with the shortlisted suppliers. • The Ombudsman noted for the record that she had known the lead consultant from BritainThinks for a number of years. This is included in the evaluation document but there is no record of how this influenced the panel and what safeguards were considered. The Ombudsman took the personal action to not be formally part of the evaluation team and not to speak on the bids until all other members of the panel had spoken. This was a personal decision rather than one based on protocols for managing interests. • BritainThinks was the successful bidder and awarded the contract. The evaluation documentation records that this was a unanimous decision, which agrees with the recollection of those present.
May – Jul 13	Deliberative research undertaken	<ul style="list-style-type: none"> • A different team from PHSO managed this contract. All were interim appointments and again the supplier felt that the contract was not well managed. In particular the supplier felt that attempts were made to alter the scope of the work post contract award in an inappropriate way.

Procurement Summary: Conroy Consulting Limited

Conroy Consulting Limited were contracted to provide a specific aspect of assessment support for the recruitment of Executive Directors. The original amounts anticipated amounted to £18,840. Due to increases in the number of candidates and extension of the use of the assessments to Directors the total amount incurred was £44,286.

TIMELINE		COMMENTARY
June 13	Business case approved	<ul style="list-style-type: none"> The Ombudsman asked HR to source suppliers that provided Behavioural Event Interviews (BEI) to support executive recruitment. She had used this successfully in the past. HR were initially unable to find a suitable source. The Ombudsman directed HR to the agency that developed this technique. HR were again unsuccessful and the Ombudsman provided the name of an individual who had worked for the agency. This individual had worked with the Ombudsman in the late 1980s and again whilst she was at the Equal Opportunities Commission. None of this was documented. The Ombudsman played no further part in this procurement. The expected services, total £18,840, formed part of a larger Business Case for a number of assessment tools as part of the senior recruitment, with total value £81,000. All elements of the Business Case were sourced on a single tender action.
June 13	Purchase order raised	<ul style="list-style-type: none"> The contractor had to ask several times for formalisation of the commissioning of work as they were being asked to do preparatory work before they had been formally contracted. This procurement was confirmed by Purchase Order rather than formal contract.
Oct – Nov 13	Additional work undertaken	<ul style="list-style-type: none"> PHSO found the BEI interviews to provide valuable information to support the recruitment. A number of additional pieces of work were commissioned from the consultant: <ul style="list-style-type: none"> PHSO had underestimated the number of interviews it needed per vacancy; expansion of the technique to cover director recruitment as well as executive director recruitment; expansion to assess candidates for a specific role in Health Policy and Insight; and additional assessments covering further candidates for above role A number of Business Case amendments were put through to cover the increases, although in all cases this was done after the work had been requested and performed. Total budget in the final Business Case for recruitment ended up £124,026 with maximum budget for the element being undertaken by Conroy Consulting Limited being £54,840, which highlights the inadequacy of the original Business Case
Dec 13	Final payment	<ul style="list-style-type: none"> PHSO needed to increase the value of the Purchase Order to reflect the increased Business Case. As a result it took over a month for the supplier's final invoice to be paid.