Parliamentary and Health Service Ombudsman

Local Government & Social Care OMBUDSMAN

JOINT WORKING TEAM

Manual

Contents

1. Introduction ... 1
Key Principles: ... 1
Common joint working topics ... 2
2. Governance ... 2
3. Statutory requirements related to joint working cases ... 2
Consent ... 2
Notification of Investigation ... 3
Statutory 52 week letter ... 3
4. Prematurity ... 4
5. The joint working process ... 4
Consulting ... 5
Consultation – the Initial look stage ... 7
PHSO requests ... 7
LGSCO requests ... 7
Handling Initial Look Tasks ... 8
The Assessment stage ... 10
JWA decisions ... 11
Transferring cases back to PHSO ... 12
Cases needing a detailed joint working investigation ... 13
Where to send health decisions and action plans ... 13
Hard copy documentation ... 14
Legal advice ... 14
Evidence sharing ... 14
Decisions ... 15
6. Escalation process ... 15
7. Post decision reviews ... 17
8. Taking legal advice for judicial review or other court action ... 17
9. Targets and performance ... 17
10. Useful information and documents ... 17
11. Key jurisdictional issues ... 18
Complaints where the matters complained about are 'out of time' ... 19
Questioning the 'merits' of a decision ... 21
General ... 21
Clinical judgments ... 21
Clinical advice and the role of the Ombudsman ... 22
The Ombudsman's Clinical Standard ... 23

Obtaining Clinical advice 24
Is there an alternative right/remedy? 26
Who is the body in jurisdiction in joint working cases? 29
Practical application 30
Section 75 agreements 30
GP contracts 31
Complaints involving Funded Nursing Care (FNC) or Continuing Health Care funding (CHC) 31
Appendix One – NHS Structures 32
Appendix Two – PHSO decision reasons 35
Appendix Three – using ECHO for joint working 37
Joint Working Screen 37
One case per JW complaint 38
Publishing joint working cases 39
Officials 39
JWBinJ identification 39
JWB Category 39
JWB Enquiries 39
JWB Clinical advice 40
JWB Holding/Invalid 40
JWB Draft Decision 41
JWB Decision 41
JWB PDR 41
JWB Public Value/Comms 42
JWB Remedy 43
JWBinJ Information 43
Creating letters in ECHO 43
Appendix four – Remedies 44
Apportioning financial remedies 44
Appendix Five – PHSO amended scheme of delegation 45

1. Introduction

The Local Government and Social Care Ombudsman (LGSCO) and the Parliamentary and Health Service Ombudsman (PHSO) are committed to working together where there is a strong overlap between health and social care issues. To help us achieve this, amendments made to primary legislation by the Regulatory Reform Order (2007) empower us to share information about individual cases, conduct joint investigations and issue joint decisions on cases. Since April 2015, the Joint Working Team (JWT) managed by LGSCO has been handling all joint working (health and social care) complaints.

This manual sets out in one place guidance on key processes and on jurisdictional and policy considerations which have been agreed between the two Ombudsmen. The Joint Working Team will follow LGSCO's processes except where deviations have been agreed and are set out in this manual. This manual should therefore be read in conjunction with the LGSCO's other manuals and key guidance documents:

- The Assessment Code
- Assessment manual
- Investigation manual
- Statement of Reasons manual
- Remedies Process Manual and Guidance on Remedies
- Quality and Standards manual
- PDR and Service Complaints Manual
- Legal manual
- Casework Policy Forum Guidance Statements

The contact details for key staff mentioned in this manual can be found here. Copies of internal guidance provided to PHSO staff about joint working can be found here.

Key Principles:

Complaints are dealt with through LGSCO's/PHSO's core teams, separating out the health and social care issues, *unless*:

- **there are health and social care issues which are so entwined we can only work out who was responsible for any fault and/or injustice by investigating both functions at the same time; *and***
- **the health and social care issues are both fundamentally significant to the overall complaint, rather than one being relatively minor compared to the other.**

1. JWT carry out both assessments and investigations.
2. The JWT deals with health complaints from PHSO, but not Parliamentary joint complaints.
3. The delegation schemes for both Ombudsmen have been amended to include delegation for joint working cases to JWT Investigators and the Assistant Ombudsman (AO). Therefore, the JWT has delegation to work on behalf of both organisations. See appendix Five for the PHSO Scheme of Delegation and here for the LGSCO Scheme.
4. Each joint case investigated is considered by one Investigator.
5. When any correspondence, draft decisions or decisions etc, are sent externally, a joint letterhead is used.

6. The AO arranges allocation of joint working cases and the JW Team Coordinators (JWTCs) administer the process.
7. Whether a case is considered joint is at the sole discretion of the JWT, based on their professional judgment and the circumstances of the case. The JWT may seek advice as necessary from colleagues at LGSCO or PHSO.
8. The JWT may decide to return a case to LGSCO or PHSO for consideration at its sole discretion.

Common joint working topics

There are a number of common topics that may suggest the need for joint working. Some examples are:

- Nursing home / care home complaints where there is some NHS funding (FNC)
- Mental health (including s117 aftercare)
- Continuing Health Care funding
- Community Mental Health Teams (CMHT's)
- Child and Adolescent Mental Health Services (CAMHS)
- Safeguarding and child protection
- Deprivation of Liberty (DoLS)
- Hospital discharge
- Reablement
- Direct Payments
- Special Educational Needs

2. Governance

The JWT is managed within LGSCO by an Assistant Ombudsman using LGSCO's standard policies and procedures, except where this manual specifies something different. Where necessary, individual issues or cases will be escalated to relevant senior managers within both organisations. PHSO management will not have any day to day responsibility for ongoing JWT cases or their handling.

PHSO and LGSCO Boards will be provided with a standard set of agreed key performance information on a quarterly basis.

3. Statutory requirements related to joint working cases

Consent

The Regulatory Reform Order inserted into the Local Government Act 1974 (LGA74) sections 33ZA (part 3) and 34N (part 3a) and into the Health Service Commissioners Act 1993 (HSCA 93) section 18ZA. These sections require, at (2), that

> *A Local Commissioner must obtain the consent of [the person affected] or [the complainant (if any)] before agreeing to a joint investigation referred to in subsection (1) above.*

The Order is silent on what consent is actually for. However, LGSCO and PHSO have agreed that consent is required for:

a) The complaint to be considered jointly; and
b) For information to be shared between LGSCO and PHSO

Unless reasonable adjustments dictate otherwise, consent should be in writing, though a note of oral consent is acceptable in the first instance, to be followed up with written consent. Where someone has given their consent for another person to represent them in dealing with their complaint, and where we are satisfied that representative is a suitable person,

consent for joint working can be accepted from the representative. We should not transfer a case to the joint working team until written consent has been given by either the person affected or their properly authorised representative.

If consent is withdrawn, we cannot investigate the complaint jointly. The 'no longer joint working' field should be completed and a discussion held with the AO about how to deal with the now separated complaints.

Notification of Investigation

Section 11(1) of the Health Service Commissioners Act 1993 says that where PHSO propose to investigate, the organisation involved should be given an opportunity to comment on the complaint. The same requirement is placed on the LGSCO in part 28(1) of the LGA74.

We will advise the organisations (BinJ) involved in a case that we have started to assess the complaint. If we decide that the case needs to be investigated in detail, we will let the organisations know.

If a BinJ, PA or REP raise concerns about the proposal to investigate, these will be dealt with and responded to by the investigator. This may mean the initial scope of the complaint could change once the investigator has considered any comments from all parties.

Where we identify new bodies in jurisdiction during the course of an investigation, we must ensure they are given the same opportunity to comment. The standard letter can be tailored to inform any new BinJs identified at this later stage.

Statutory 52 week letter

Section 14 (2HA) of the HSCA 93 states that:

> *Where the Commissioner has not concluded an investigation before the end of the 12 month period beginning with the date the complaint was received, the Commissioner must send a statement explaining the reason for the delay to the person who made the complaint.*

Therefore, where a complaint has not been decided within 12 months of the date of receipt by PHSO, the allocated investigator will send a letter to the complainant explaining what action has been taken on the complaint. There is a specific field on the joint working screen to record when the statutory letter is due, and when it was sent. The due date field will also set a task to advise the letter is due. The task date is set for 50 weeks from the date of receipt so allows time for the letter to be sent before the due date. Usually, the letter will be sent as a standalone document, but in those instances where it coincides with other correspondence, such as a draft decision, it can be included in that letter.

However, the letter should be clear that the explanation is included to meet the statutory requirement. Statutory letters should be sent in the two week period between the task being due and the 52 week anniversary of the complaint being received, and not after the 52 week anniversary. PHSO must report to Parliament all instances where a statutory letter is sent late. There may be exceptional instances where it is not appropriate to send a statutory letter, but approval should be sought from the Assistant Ombudsman in those instances.

Where a case has been resubmitted, the date the statutory letter is due will be based on the resubmitted date, and not the original date of receipt. JWTCs will amend the 'date received by JW body' field and 'statutory letter target date' fields to reflect the revised dates.

Where a case was initially submitted to LGSCO, and then subsequently identified that the case should be joint working, and therefore the HSCA 93 is engaged, the 52-week period will run from date the PA/REP gives written consent for joint working. As it is at that point, the team will be acting on behalf of both Ombudsmen.

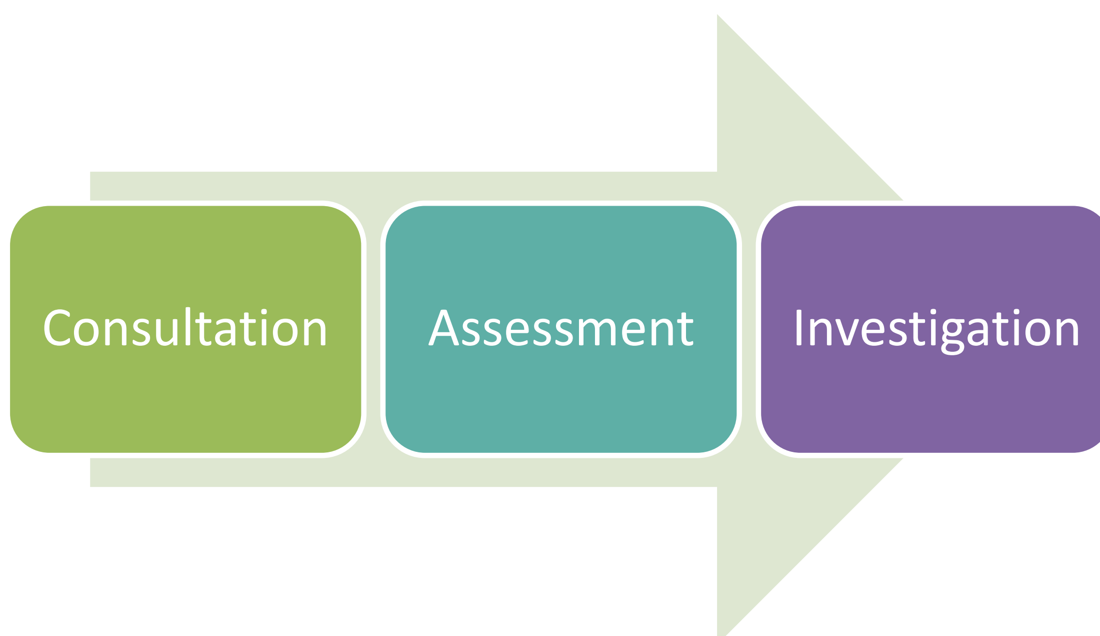
4. Prematurity

The complaints procedure for councils and NHS organisations is set out in the Local Authority Social Services and NHS Complaints (England) Regulations 2009. The provisions of the regulations mean that anyone who is dissatisfied with a decision made by a council or social care provider or the NHS is able to make a complaint about that decision and have the complaint handled by the council, social care provider or NHS. Section 9 covers complaints that concern more than one responsible body. It states that, in these circumstances, the responsible bodies must co-operate in handling the complaint. This includes duties to: establish who will lead the process; share relevant information; and provide the complainant with a coordinated response.

When assessing a case for prematurity, PHSO and LGSCO have agreed that it is generally not reasonable to expect a complainant to have exhausted two separate complaints procedures where the initial local response should have covered all elements of the complaint. However, there may be exceptions to this in cases where, for example, the complainant has a statutory right to a specific procedure and has opted to exercise that right. If it is better to allow the local procedure to go ahead, but it would also be preferable for the investigation to cover both jurisdictions at the same time, we have the option to close one side of the case to wait for the process on the other side to be completed. We should be clear with the organisations that we expect them to deal with the complaint promptly and to advise the complainant of their right to come back to the Ombudsmen once local complaints processes have been concluded.

5. The joint working process

The joint working process can be simply explained as follows. At the end of each stage a decision will be made about what should happen with the complaint.



Copies of internal guidance provided to PHSO staff about joint working can be found here.

Consulting

Before a case can be transferred to the JWT, PHSO and LGSCO staff will consult with the JWT team to check whether, on a brief consideration of the facts, the case meets the criteria for joint working. We call this an initial look task. We do not need consent to carry out an initial look task on a case by virtue of:

LGA 74 (and equivalent for Part 3a)

33 Consultation between Local Commissioner, the Parliamentary Commissioner and the Health Service Commissioners [and other Commissioners and Ombudsmen]

(1) If, at any stage in the course of conducting an investigation under this Part of this Act, a Local Commissioner forms the opinion that [the matters which are the subject of the investigation include] a matter which could be the subject of an investigation—

(a) by the Parliamentary Commissioner, in accordance with section 5 of the Act of 1967,

. . .

(b) by the Health Service Commissioner for England . . ., in accordance with [the Act of 1993],

………

he shall consult with the appropriate Commissioner [or . . . Ombudsman] [about the matter and, where a complaint was made about the matter, he shall], if he considers it necessary, inform the person initiating the complaint under this Part of this Act of the steps necessary to initiate a complaint under the Act of 1967[, . . .][. . . the Act of 1993[, the Public Services Ombudsman (Wales) Act 2005] or under the Act of 2002], as the case may be.

(2) Where, by virtue of subsection (1) above, a Local Commissioner consults the Parliamentary Commissioner, [a housing ombudsman,] [the Public Services Ombudsman for Wales][, the Scottish Public Services Ombudsman] or [the Health Service Commissioner for England] in relation to [a matter under investigation under this Part of this Act], he may consult that Commissioner [or] [that Ombudsman] about [anything relating to the matter], including—

(a) the conduct of any investigation into the [matter], and

(b) the form, content and publication of any report of the results of such an investigation.

[(3) If at any stage in the course of conducting an investigation under the Act of 1967, the Parliamentary Commissioner] forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Part of this Act, he shall consult with the appropriate Local Commissioner about the complaint and, if he considers it necessary, inform the person initiating the complaint . . . of the steps necessary to initiate a complaint under this Part of this Act.

……..

(6) In this section the "Act of 1967" means the Parliamentary Commissioner Act 1967 and ["the Act of 1993" means the Health Service Commissioners Act

1993] [and the Act of 2002" means the Scottish Public Services Ombudsman Act 2002].

HSCA 93

18 Consultation during investigations

(1) Where [the Commissioner], at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly [or wholly] to a matter which could be the subject of an investigation—

(a) . . .,

(b) by the Parliamentary Commissioner under the Parliamentary Commissioner Act 1967,

[(ba) by the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005,]

(c) by a Local Commissioner under Part III [or 3A] of the Local Government Act 1974, . . .

(d) [by the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002], [. . .

(e) . . .]

he shall consult about the complaint with the appropriate Commissioner [or . . . Ombudsman] and, if he considers it necessary, he shall inform the person initiating the complaint of the steps necessary to initiate a complaint to that Commissioner [or . . . Ombudsman].

(2) Where [the Commissioner] consults with another Commissioner[, the Scottish Public Services Ombudsman] [or . . . Ombudsman] in accordance with this section, the consultations may extend to any matter relating to the complaint, including—

(a) the conduct of any investigation into the complaint, and

(b) the form, content and publication of any report of the results of such an investigation.

(3) Nothing in section 15 (confidentiality of information) applies in relation to the disclosure of information . . . in the course of consultations held in accordance with this section.

Based on the above both organisations can share information about a complaint to consult with each other without the express consent of the PA or REP. As this is set down in law, the rules around GDPR and consent do not apply because we will be carrying out a statutory function when we consult with each other.

There is no mechanism for a PA or REP to appeal or challenge an initial look task decision. It is solely the JWT's decision about whether a case should be transferred into the team.

Consultation – the Initial look stage

PHSO requests

PHSO staff will send an email to the LGSCO Intake dedicated email address containing:

- Name of PA
- Name of REP (if appropriate)
- The PHSO reference number
- Details of the organisations involved, where known
- A copy of the PHSO complaint form and any substantive BINJ responses
- An explanation of the complaint and why the PHSO staff member thinks it might be suitable for JW; and
- The contact details of the PHSO staff member including direct dial phone number.

LGSCO Intake will set up new case on ECHO, save the JW screen and forward the case to Assessment. This creates a task for the JWTC.

Copies of internal guidance provided to PHSO staff about joint working can be found here.

LGSCO requests

Intake

Where an adviser identifies **during a phone call** that there may be an opportunity for joint working they will:

- Ask the person if they want to complain about care/treatment by the NHS organisation as well as the Council/care provider
- If yes, the adviser will explore the following:
  - Do they want the JW team to consider the complaint?
  - Does the person provide consent for LGSCO to share their personal information with the PHSO?
  - The person making the complaint may ask what is involved regarding consent. If so, the adviser can use the consent letter and form in JWA letter template folder as a guide.
  - Which NHS organisation(s) is it they are complaining about? (including name and address)
- If no, it is an LGSCO complaint and needs forwarding to the LGSCO assessment queue
- If yes, the adviser will save the JW screen which will put the case into the JWA queue and set a task for the JWTC.

Alternatively, where an adviser identifies from a **complaint form or letter** that there may be an opportunity for joint working they will:

- Try to make phone contact with the person to clarify if they want to complain about care/treatment by the NHS organisation as well as the Council/care provider
- If yes, the adviser will explore the following:
  - Do they want the JW team to consider the complaint?
  - Does the person provide consent for LGSCO to share their personal information with the PHSO?
  - The person making the complaint may ask what is involved regarding consent. If so, the adviser can use the consent letter and form in JWA letter template folder as a guide.
  - Which NHS organisation(s) is it they complaining about? (including name and address)
- If no, it is an LGSCO complaint and needs forwarding to the LGSCO assessment queue

- If yes, or no phone contact can be made, the adviser will save the JW screen which will put the case into the JWA queue and set a task for the JWTC.

Assessment

If a case is at Assessment and the investigator thinks it may be suitable for joint working, they should

- Make a note in N&A to explain why they think the case may be suitable for JW, and
- Try to make phone contact with the person to clarify if they want to complain about care/treatment by the NHS organisation as well as the Council/care provider
- If yes, the investigator will explore the following:
    - Do they want the JW team to consider the complaint?
    - Does the person provide consent for LGSCO to share their personal information with the PHSO?
    - The person making the complaint may ask what is involved regarding consent. If so, the adviser can use the consent letter and form in JWA letter template folder as a guide.
    - Which NHS organisation(s) is it they complaining about? (including name and address)
- Save the JW screen – this will put the case in the JW queue and set a task for the JWTC.
- If the investigator cannot make contact with the PA/REP, they should just save the JW screen

Investigation

As the case is already at IU in ECHO we should not go through the regression process to try to get it back to AT. This adds too many complications and will cause reporting issues. We will therefore use the ‘shadow case’ process.

The IU TC should set up a new shadow case on ECHO and link it to the original case. The lead BinJ on the case will be the same as that on the original case. The contact method on the contact screen will be ‘JW Assessment Case. The date of receipt will be that day’s date. The case should also be marked as ‘**urgent’**. The process will then be the same as if we had received notification from PHSO.

The IU investigator/TC will save JW screen and forward the shadow case to assessment. This creates a task for the JWTC and puts the case in the JWA queue.

NB: While the ‘shadow case’ will be used to record outcomes, any notes and documents etc should be held in the original case.

Handling Initial Look Tasks

The JWTC will check the ILT unallocated report for new cases and will assign the case to a team member as soon as possible. This is done through the fields on the JW screen.

The investigator will then consider if the case needs full JW consideration and will record their decision in the fields on the JW screen. The initial look task will be completed within five working days of the request.

Hints and tips for considering initial look tasks can be found here. More information about completing the joint working screen for initial looks tasks case be found here.

Possible outcomes after Initial Look

Referral from PHSO

If a case is not suitable for a full joint working assessment, the investigator will advise the PHSO staff member of the outcome. The investigator will complete the allocation screen and early decision screen on ECHO, using the invalid decision reason - 'not a body in jurisdiction' If the complaint contains parts which LGSCO could investigate, PHSO staff will be advised to signpost the complainant to LGSCO.

If a case is suitable for a full joint working assessment, the investigator will advise the PHSO staff member by email, ask them to get written consent from the PA/REP and to send over the relevant documents on the case once written consent has been received. The transfer documentation will be sent directly to the JWTC.

PHSO will also confirm the date PHSO received the complaint. PHSO cannot send documents over until written consent is received. PHSO will also write to the PA/REP advising the complaint is being passed to the JWT for further consideration. This letter should explain possible outcomes i.e.

- whether we could or should investigate
- whether we should consider the complaint jointly; or
- whether each or both organisations should consider the complaint but separately of each other.

Referral from LSGCO Intake

The JWT investigator will consider the case. If they decide that the case:

- Is suitable for further JW consideration, the JWTC will send a notification to the PA/REP which will explain about JW, ask for written consent and explain possible outcomes:
  - whether we could or should investigate
  - whether we should consider the complaint jointly; or
  - whether each or both organisations should consider the complaint but separately of each other.
- Is not suitable for JW consideration, they will record their decision in the fields on the JW screen and enter a date in the 'no longer JW' field. This will put the complaint back in the AT queue as long as the AT allocation screen has not been saved. AT can then allocate and assess as usual. They should also include a note in N&A if the PA/REP needs signposting to PHSO. It will then be for the AT investigator to do so during their consideration and contact with the PA/REP
- Does not have enough information on it to decide if it is JW, they should contact the PA/REP for the additional information they need.

Copies of internal guidance provided to PHSO staff about joint working can be found here.

Referral from LGSCO Assessment

The investigator will consider if the case is suitable for a full joint working assessment and record their decision in the fields on the JW screen. If they decide that the case:

- Is suitable for further JW consideration, they will ask the AT Investigator to send a notification to the PA/REP which will explain about JW, ask for written consent and explain possible outcomes:
  - whether we could or should investigate
  - whether we should consider the complaint jointly; or
  - whether each or both organisations should consider the complaint but separately of each other.

  It is the responsibility of the AT investigator/TC to ensure that written consent is received.

- Is not suitable for JW consideration, they will record their decision in the new fields on the JW screen and enter a date in the 'no longer JW' field. They should then reallocate the case back to the investigator who raised the original query and set them a task to advise the JW consultation is complete. They should also include a note in N&A if the PA/REP needs signposting to PHSO. It will then be for the AT investigator to do so during their consideration and contact with the PA/REP
- Does not have enough information on it to decide if it is JW, they should ask the original AT investigator to contact the PA/REP for the additional information they need.

Referral from LGSCO Investigation

NB: While the 'shadow case' will be used to record outcomes, any notes and documents etc should be held in the original case.

- The investigator will consider if the case merits a full joint working assessment and record their decision in the fields on the JW screen.
- If it is not JW, they will contact the LGSCO investigator to advise. They will also need to complete the allocation screen and early decision screen on ECHO on the shadow case. The decision reason they will use is one of the invalid decision reasons - 'not a body in jurisdiction'. They can then close the case. If the complaint contains parts which PHSO could investigate separately, the original investigator will signpost the complainant to PHSO.
- If the case is suitable for JW consideration, the original investigator must ensure we have written consent from PA/REP for information sharing and joint working between PHSO/LGSCO. We cannot accept the complaint into JW until we have written consent. The JW Investigator will complete the relevant fields on the Joint Working screen to record the outcome of their initial look task.

The Assessment stage

Where, following an initial look task, a case needs a full joint working assessment, it will appear in the JWA unallocated post look task report. The JWTC will use this report to allocate cases to investigators for assessment.

When a case is allocated, the TC will complete the AT allocation screen and send out an allocation letter which will explain the assessment aspects of the function – to manage expectations and ensure the PA/REP does not get the impression we will definitely be investigating fully. The JWTC will task the investigator to advise they have a new case.

The investigator will then assess the case to decide:

- Who are the BinJs
- Could we investigate
- Should we investigate
- Should we investigate jointly

Cases that are flagged as urgent, either because of the circumstances of the complaint, or because the case is already at LGSCO or PHSO investigation will be prioritised for allocation.

Assessing cases already at investigation

Where a case has come from LGSCO IU, when a case is allocated, the JWTC will complete the AT allocation screen (on the shadow case) and will task the investigator to advise they have a new case. The JWTC should **not** send out the joint working allocation letter.

The JW investigator will then assess the case as above. If the JWT Investigator decides the answer to all of the above is yes, they will support the IU investigator to clarify the scope of the complaint and to send the appropriate letters to the additional health BinJs. The JWT investigator will, on the shadow case, complete the Assessment decision screen for the existing lead BinJ and the JWBinJ Location holding/invalid screens for each of the health BinJs. They will use the following decision reason – 'IU case accepted for JWI'. They can then close the shadow case. The case will remain with the original IU investigator who will be supported by the JWT as necessary to investigate the health organisations and complete the additional ECHO screens.

If the case is not suitable for joint working, the JWT investigator should complete the early decision screen on ECHO on the shadow case. The decision reason they will use is 'IU case NOT accepted for JWI'. They can then close the shadow case. If the complaint contains parts which PHSO could investigate separately, the original investigator will signpost the complainant to PHSO.

NB:
The cases where the contact method is 'JW Assessment Case' will be excluded from the annual statistics for Part 3/3a BinJs, otherwise we will end up double counting against some BinJs. The decision reasons of 'IU case accepted for JWI' and 'IU case not accepted for JWI' can be found under the 'invalid/forwarded' dropdown list and should only be used by JW team.

While the 'shadow case' will be used to record outcomes, any notes and documents etc should be held in the original case.

JWA decisions

We aim to make an assessment decision on a case within 20 working days of allocation to a JWT investigator. There are a number of different outcomes following a joint working assessment. The table below summarises how JWA decisions should be communicated to PAs/REPs and BinJs:

JWA decision	**How to communicate final outcome to PA/REP**	**Decision reasons to record on ECHO**
Forward for investigation	By standard notification letters	Forwarded to investigation
Separated - LGSCO and PHSO to consider issues separately	By letter to explain health issues referred back to PHSO and LGSCO issues to be investigated by LGSCO investigation team	Lead BinJ – Forwarded to Investigation JWBinJs – Separated – Referred back to PHSO, Council case forwarded for LGO investigation
Separated – LGSCO complaint not to be investigated, health complaint to be referred back to PHSO	Decision statement for LGSCO complaint & cover letter to explain PHSO referral	Lead BinJ – Relevant assessment decision reason JWBinJs – Separated – Referred back to PHSO, Council case closed at assessment
Separated – LGSCO complaint has previously been investigated, health	Decision statement for LGSCO complaint & cover	Lead BinJ – Already considered and decided

complaint to be referred back to PHSO	letter to explain PHSO referral	JWBinJs – Separated – Referred back to PHSO, Council case closed at assessment.
Separated – LGSCO complaint to be investigated, health complaint not to be investigated	Decision statement for health complaint and cover letter to explain LGSCO complaint forwarded for investigation	Lead BinJ – Forwarded to Investigation JWBinJs – Separated – Single Council (no health case to investigate)
Neither LGSCO or health parts of complaint to be investigated	Decision statement	Lead BinJ – Relevant assessment decision reason JWBinJs – Relevant assessment decision reason
Premature decision	By letter	Lead BinJ – Premature JWBinJ - Premature

Assessment decisions on LGSCO matters should be logged on ECHO using the LGSCO's standard decision reasons and decisions on PHSO matters should be logged using PHSO's decision reasons. A full list of these reasons can be found at appendix two.

Decision statements are structured in accordance with the LGSCO's Statement of Reasons Manual. Where we decide that a case should not be investigated by JWI and that the issues can be separated, the JWT investigator does not need to issue a formal decision statement on those parts which are to be investigated solely by PHSO or LGSCO. We can communicate this decision by letter. These letters should be put into the Decision and PDR decision folder in ECHO. If we make a decision which relies on either LGSCO or PHSO jurisdiction, either with or without discretion, this must be communicated in a decision statement. This does not apply to premature decisions.

Where we decide that the case is no longer a joint working case, for example a complainant has withdrawn consent for joint working, or all the functions complained about are the responsibility of either the Council or health body, the JWT investigator should enter the relevant date in the "No longer Joint Working" field in the "Joint Working" screen on ECHO.

Transferring cases back to PHSO

If the complaint needs to go back to PHSO, and the LGSCO part investigated separately, the JWT investigator will advise the PA/REP as such, complete the 'no longer JW' flag, fill in the decision screens for the health bodies using the separated reasons, and then task and email PHSO Business Support to inform them the case needs to be dealt with by PHSO. They will complete the form 'summary for case transfer from LGSCO to PHSO'. The investigator will also need to create a new folder in document summary called 'Docs for PHSO'. They should then ensure that the form and any other relevant documents are in that folder. The investigator will then complete the early decision record and forward the case to investigation for the LGSCO part.

If the complaint needs to go back to PHSO, but the LGSCO part not investigated, then the investigator will issue a draft and final decision on the LGSCO part of the complaint and also explain that the case will be transferred back to PHSO. If any comments on their draft decision have no impact on their conclusions, the JWT Investigator will complete the early decision screen. They will then refer the health case back to PHSO for priority assessment

by tasking and emailing PHSO Business Support. They will complete the form 'summary for case transfer from LGSCO to PHSO'. The investigator will also need to create a new folder in document summary called 'Docs for PHSO'. They should then ensure that the form and any other relevant documents are in that folder.

PHSO will then prioritise these cases for its own assessment so that these cases can more easily follow PHSO revised processes and the complainant is not adversely affected by having had to wait for a JWT assessment and then a PHSO one.

If we have contacted a health body for information during the assessment, but then decide that part of the complaint will not be investigated, we must advise the health body of that decision.

Copies of internal guidance provided to PHSO staff about joint working can be found here.

Cases needing a detailed joint working investigation

If the investigator, at the end of their assessment, considers the case needs further consideration before they can make a robust decision on the complaint, they will draft the scope of the complaint and issue the notification of investigation letters – these mirror the letters being used by LGSCO around BinJ notification. The same letter will be used to gather relevant information from BinJs/make enquiries.

The investigator will then forward the case to investigation. The same investigator will need to complete the IU allocation screen on the same day they forward the case so the case stays with them.

JWT investigations should be carried out in accordance with this manual, the LGSCO Investigation Manual and the joint working development log.

If either the PA/REP or BinJs have provided any comments on the proposal to investigate, these should be considered before any further enquiries are sent. A response to any comments can then be included in any enquiry letter that is sent. If the JWT investigator decides they have enough information to be able to form their provisional conclusions on the complaint and the PA/REP or BinJ has responded to the proposal to investigate letter, they should respond to those comments before issuing any draft decision documentation.

If we are continuing to investigate, the investigator will then record their investigation in the investigation, PV and decision sections of workflow.

At the end of the investigation, the Investigator will issue a decision to the complainant and each of the bodies in jurisdiction.

Where to send health decisions and action plans

If the investigator makes recommendations for systemic improvements to a health body, they will need to ask that body to share a copy of the final decision statement with the relevant regulatory agency. The full list of where decision statements and action plans should be sent can be found here.

If the complaint is about Continuing Healthcare Funding, we also need to send a copy of our decision to the relevant regional office of NHS England. The full list of contacts can be found here.

Hard copy documentation

The general expectation remains that organisations will provide the information we request electronically. However, if this is not possible, it may be necessary for them to send this information in hard copy.

Hard copy papers should be sent to the Coventry LGSCO address.

PHSO may hold additional information relevant to the complaint. This could include health records. Where possible, all transfers of information will be done electronically but any paper files retained by PHSO can be transferred to the allocated investigator's office.

When the documents can be scanned

Intake will scan what is 'scannable' when it arrives and task the case owner, or JWTC if the case has no owner (Intake will add a note to N&A including which BinJ sent the documents. These hard copies will then go into the normal Intake storage area and will be destroyed after 12 weeks in line with standard procedures.

When the documents cannot be scanned

Where the case is unallocated, for any documents that cannot be scanned, LGSCO Intake will make a note in N&A that they have the documents, including which BinJ sent them, task the JWTC and keep the hard copy documents for six months. A task will be set for ITL and the Intake staff member to remind them of the documents' existence in Intake. We expect that by six months, the case should have been allocated and the documents should then have been sent to the case owner. It is important to remember that hard copy records may include CDs of X-rays or scans, and the allocated investigator will need to make sure they obtain the hardcopy documents from the post archive team. Where documents arrive and the case is already allocated, the hard copy documents will be forwarded to the allocated investigator.

Where we have hard copy documents related to a case, a note of their existence and where they are stored must be in N&A and we must ensure they are subsequently destroyed in line with LGSCO's document retention policy.

Legal advice

Legal advice may be sought by JWT Investigators from either the PHSO legal team or LGSCO's legal advisors (Bevan Brittan), depending on which may be better placed to provide the advice, considering its subject matter. In addition, where PHSO legal team advise that a response to a legal advice request cannot be met within 10 working days, the investigator should consult with the AO about using Bevan Brittan instead. Bevan Brittan are contracted under a fixed fee retainer agreement to provide 15 minute telephone advice to Investigators and/or written advice on specific matters. All requests for written legal advice from Bevan Brittan must be signed by the AO. More information about legal advice requests can be found in the Legal Manual.

Evidence sharing

The evidence gathered for joint working cases can often be considerable and it is not always helpful to share it in its entirety with a complainant. JWT should, however, as a bare minimum share a copy of any BinJ enquiry responses with the complainant. Usually it is appropriate to share clinical advice however, it should be redacted first to remove the adviser's details. Clinical advice should also be shared with the relevant BinJ, unless there are exceptional reasons why it shouldn't be. If a piece of clinical advice covers the actions of more than one BinJ, there is no need to redact it to remove advice about the other BinJs actions when you share it with each of the BinJs as this information will also be available in the draft decision statement.

If a complainant or representative subsequently asks for all the documents we have seen, then we should share them, taking into account any other restrictions which may apply to the sharing of information.

Decisions

JWI decisions should be structured in accordance with the LGSCO's Statement of Reasons Manual using the JW decision template.

Decisions on LGSCO matters should be logged on ECHO using the LGSCO's standard decision reasons and decisions on PHSO matters should be logged using PHSO's decision reasons.

A full list of PHSO decision reasons is available at appendix two.

6. Escalation process

This process only applies where all the normal working processes have already been completed, the investigator has found fault leading to injustice and yet one or more of the bodies in jurisdiction is refusing to fully comply with our recommendations.

General principles

1. **Reasonableness:** Where a body in jurisdiction has a difficulty in complying with one of our recommendations, in the first instance, we use our best endeavours to understand why and negotiate a reasonable outcome
2. **Thoroughness:** Where negotiation is unsuccessful, we will escalate matters to try to bring about compliance, using the full extent of our powers where it is necessary to do so, recognising that our recommendations are not legally binding on bodies in our jurisdiction.
3. **Transparency:** Where a body in jurisdiction remains non-compliant with one of our recommendations, we will ensure that this situation along with the contextual information which has led to it, are clearly explained to the public and all relevant third parties.
4. **Proportionality:** Both Ombudsmen will be notified of non-compliance arising from investigations undertaken by the joint working team and the reasons for this. Decisions will be made on a case-by-case basis and we will only escalate matters where both Ombudsmen agree that it is appropriate to do so.

The process to follow

There are three broad types of bodies in jurisdiction which might be involved in a joint working complaint:

- a health body under the Health Service Commissioner Act 1993 (the **1993 Act**);
- a local authority under the Local Government Act 1974 (the **1974 Act**);
- an independent adult social care provider under the Health Act 2009 which inserted a new Part 3A into the Local Government Act 1974 (**Part 3A of the 1974 Act**).

The different legal frameworks which apply to each will influence the action we take.

In every escalated case (i.e. irrespective of how many different types of body are involved in the complaint and against which of these we find fault), the team will prepare a decision statement using the standard agreed format used for all joint cases. This names each of the

bodies in jurisdiction but, generally, all other identifying details, including the name of the complainant, are anonymised.

Identical copies of this decision statement will be issued to each of the bodies in jurisdiction (and the complainant), in line with our standard process. However, the powers under which we issue the statement (which are set out in the covering letter) will differ according to the circumstances of the case:

1. If a **local authority is found to be at fault** and will not comply with our recommendation(s), we will explain to the local authority that the decision statement constitutes a report under s30 of the 1974 Act. The report will list all the bodies involved in the complaint but will be explicitly clear about where the fault lies. In line with LGSCO's standard approach to reports, the joint team will inform the local authority that it is obliged to publicise the report within two weeks under s31 of the 1974 Act and if it does not comply we will issue a further report. LGSCO will work collaboratively with PHSO to publicise the case in an appropriate way. The other body/bodies which are not at fault will be kept updated and we will respond to any queries or concerns they may have.

   If, after this has happened, the local authority persists in its refusal to comply, we will draft another statement setting out what has happened. This will be issued to the local authority as a further report under s31 of the 1974 Act. LGSCO and PHSO will, once again, work together to publicise the case in an appropriate way.

2. If a **health body is found to be at fault** and will not comply with our recommendation(s), we have two options:
   a. Explain to the health body that we have significant concerns about the non-compliance and we are issuing a joint report under s18ZA of the 1993 Act and s33ZA of the 1974 Act. We have judged that it is in the public interest for our joint report, highlighting the health body's decision not to comply with our recommendations, to be made available to others under s14(2I) of the 1993 Act and we have therefore decided to publish the joint report. The report will list all the bodies involved in the complaint but will be explicitly clear about where the fault lies. LGSCO and PHSO will work together to publicise the case in an appropriate way. The other body/bodies which are not at fault will be kept updated and we will take account of any concerns they may have.
   b. Alternatively, if the health body's refusal to comply is of particular importance, we will draft a special report under s14(3) of the 1993 Act setting out what has happened and lay this before Parliament. The format of the report and collaboration between LGSCO and PHSO regarding publicity will apply as above.

3. If an **independent adult social care provider is found to be at fault** and will not comply with our recommendation(s), we will follow the relevant processes set out under Part 3A of the 1974 Act, leading to an adverse findings notice being published against the independent provider. The same principles as set out above will apply in such a situation.

If, after we have exhausted the powers available to LGSCO and PHSO, the relevant body (or bodies) in jurisdiction still refuses to comply, we will give consideration to referring the matter on to the relevant Parliamentary Select Committee and/or Government Department, setting out the approach we have taken and the basis for our ongoing concerns.

7. Post decision reviews

Other than in exceptional circumstances, cases will only be reviewed if the request for a review is received within one month of the decision.

Reviews will be carried out in accordance with LGSCO's normal processes (see the Investigation Manual and PDR and Service Complaints Manual). Reviews of joint working investigations will be carried out by nominated managers. If they need further advice on the health side of a joint complaint, they can contact the PHSO Operations Manager who holds the portfolio for joint working.

8. Taking legal advice for judicial review or other court action

If a complainant issues a letter under the pre-action protocol for judicial review, or otherwise seeks to bring an action in court about a joint investigation, the investigator should immediately complete a legal advice request form and inform the AO. LGSCO's jurisdiction will be considered under LGSCO's fixed fee retainer arrangement with Bevan Brittan. At the same time, the AO will inform PHSO of the challenge. LGSCO will take the lead in communicating with Bevan Brittan, however if Bevan Brittan need any additional information from PHSO they will communicate directly with PHSO's legal team. A joint response to the allegations will be sent out.

If a case reaches court, LGSCO and PHSO will discuss the matter and agree a joint approach, either instructing Bevan Brittan or deciding on a different arrangement. Whether Bevan Brittan or a different firm is instructed, the cost of their advice will be shared 50/50 between the two organisations, unless otherwise agreed. The same principles will apply to instructing counsel.

9. Targets and performance

Once in the JWT, all complaints are subject to LGSCO's normal time targets and service standards, except that the 13 week target is not applicable to the JWT. We aim to deal with cases:

- At consultation stage (an initial look task) within five working days
- At assessment stage, within 20 working days from date of allocation
- At Investigation, 95% of cases should be closed within 52 weeks of receipt

The AO will conduct regular 1:1s with the JWT Investigators, will monitor productivity and other performance and will produce performance reports for the LGSCO Casework Managers Meeting. The AO will also provide information to the JWT on performance on a monthly basis.

The AO will also work with LGSCO data analyst to ensure that statistics for the JWT are provided to the LGSCO Commission and PHSO Board.

10. Useful information and documents

The JWT have a library of documents available on K:\. The library contains links to guidance about specific health issues, various Codes of Practice and other relevant documents. The index for the library can be found here.

11. Key jurisdictional issues

Some aspects of the JWT's work require different policies and/or procedures from those generally adopted either in LGSCO or PHSO. The policies developed and agreed by the Ombudsmen are as follows:

1. Out of time guidance
2. Guidance on merits
3. Clinical advice and the role of the Ombudsmen
4. Alternative legal remedy
5. Who is the body in jurisdiction in joint working cases?

The JWT keeps a Development Log in relation to operational decisions taken by the team and this manual is updated accordingly

Complaints where the matters complained about are ‘out of time’

Both the LGA 74 and HSCA 93 contain provisions about how quickly someone should complain to the Ombudsmen. In a nutshell, both Acts say:

We won’t look at complaints over 12 months unless there is an exceptional reason

Even then, we are very unlikely to look at historical allegations - for other reasons - irrespective of the seriousness of the allegations

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> *The Ombudsmen would normally expect a complaint to be made to them within a year of someone becoming aware of the events complained of, unless there were exceptional reasons for the delay.*

Investigators should consider the following before deciding whether we should exercise our discretion over the time limit:

1. **How old is the complaint?** We must identify whether the complaint is in or out of time.
2. **Why might we exercise discretion?** If the complaint was made outside of the time limit what are the reasons for delay (e.g. could include ill health of the complainant, or time taken for organisation to respond to complaint);
3. **Previously premature cases.** Where a complaint is put again to the Ombudsmen having been closed before as premature, it needs a fresh consideration of the time limit. We take into account whether we had warned the complainant about our time limits. Note: we will usually take the view that a complaint to one of the bodies in a genuinely joint case will meet our requirement for it to have been made locally.
4. **Part in time and part out of time?** Different parts may be in or out of time, e.g.
    a. New issues form part of a complaint following an earlier premature decision (such as concerns about the intervening complaint handling). We may need to separate out the application of the time limit to the new issues and the original substance.
    b. The substance of a complaint could be out of time, but a complaint about an appeal process or a second tier handler could be in time.
    c. We should look at each of these elements carefully and take a view on whether they are separate for the purposes of the time limit.
5. **Too old for an effective investigation? Is this a historical complaint?** Historical allegations are where so much time has elapsed since the fault complained of occurred that an investigation is likely to be impeded by the passage of time.

    In all cases we will consider each complaint on its merits and take account of the unique circumstances of each case. However, we should be cautious about starting an investigation into historical allegations. The main reasons are:

    - *Evidence*: The further away in time an investigation takes place from the events to be investigated, the more difficult it may be to establish the material facts with reasonable confidence. In older cases we are less likely to be able to gather sufficient evidence to reach a sound judgement. Even if some evidence is available, we would need to be particularly careful to ensure it is reliable, and provides a full picture.

- *Context*: In many cases we cannot apply current standards, guidance, or professional expectations to historical situations. It is therefore likely to be more difficult to reach a firm and fair conclusion on whether there was maladministration.
- *Remedy*: In historical cases it is likely to be more difficult to achieve a meaningful remedy, given the length of time that has already passed, the difficulty in establishing causality over longer time periods, and changes in the situation of the parties.

Given the above factors, we should not dis-apply the requirements of s26B (LGA 74) and section 9(4) (HSCA 93) in historic cases unless we have very clear reasons for doing so that satisfy the following two tests:

- We are confident that there is a realistic prospect of reaching a sound, fair, and meaningful decision, and
- We are satisfied that the complainant could not reasonably be expected to have complained sooner.

Whilst not fettering our discretion or creating a blanket policy, a presumption will exist against exercising discretion unless there are clear and compelling reasons for doing so that satisfy both of the above tests.

The considerations relating to reliable evidence, historical context, and realistic chances of a meaningful remedy have even greater importance when considering historical allegations of serious wrongdoing and should not be set aside because the complaint relates to significant injustice, including allegations of abuse and neglect. The seriousness of the allegation is not the primary test in such cases and does not remove the obligation to consider the two tests above in relation to all historic cases.

Questioning the ‘merits’ of a decision

General

The LGSCO and PHSO have similar provisions in their respective legislation about discretionary decisions taken by the bodies which they investigate. In each case, the relevant statute states that the Ombudsman is not authorised to question the merits of a decision taken without maladministration in the exercise of a discretion vested in that body.

The Ombudsmen investigate complaints of injustice/hardship caused by maladministration or service failure but cannot question a decision simply because the complainant disagrees with it or because an Ombudsman might have reached a different decision from the one that was actually made.

This is not to say that the Ombudsmen will never question the merits of a professional judgment, but they will only do so if they consider there is fault in the way that the decision or judgment was reached.

Clinical judgments

Decisions about the merits of clinical judgments are specifically excluded from the bar on questioning the merits of a decision (Health Service Commissioners Act 1993, s3(7)). Therefore, in such cases, the team members will sometimes need to seek clinical advice in order to decide whether an exercise of clinical judgment amounts to service failure.

Clinical advice and the role of the Ombudsman

What's our purpose?

Requests for clinical advice must be clear and focused questions, never general requests for views on care and treatment

Our focus must always be on the specifics of the alleged fault, never on assessing the general standard of care

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1. The primary focus of the Ombudsman is to decide if there has been **fault**.

2. The Ombudsman's focus should not generally be on "**clinical adjudication**".

We must avoid drifting away from 1, which is defined in our primary legislation and the expectation of Parliament, and towards 2, which is not.

The importance of clinical advice

Investigators will naturally need to consider, from time-to-time, whether they require expert professional advice, in order to make an informed decision about whether there has been fault. This might be planning advice; it might be legal advice; it may be clinical advice.

Such expert professional advice should be readily available to investigators, providing the request is framed as a set of **clear and focused questions**. Ideally, this should include the investigator's proposed way forward.

PHSO issued a revised clinical standard (see Appendix One) in August 2018 following the findings of a key judicial review, where the Appeal Court found that the standards applied to the clinical advice relied upon in that investigation were unreasonable and irrational and therefore it follows they were also unlawful. The Court specifically said *"the standard chosen by the ombudsman is beguilingly simple but incoherent. It cannot provide clarity or consistency of application to the facts of different cases. There is no yardstick of reasonable or responsible practice but rather a counsel of perfection that can be arbitrary. It runs the risk of being a lottery dependent on the professional opinion of the advisor that is chosen."*

What to avoid

As with any expert professional advice, a request for clinical advice should not constitute a broad or generic request for "your comments on the clinical records" or "views on whether the care was adequate" or "whether the notes suggest there have been failings". This is, to some extent, understandable in the face of complicated clinical information and jargon – but is generally indicative of a lack of confidence and/or misunderstanding of the primary focus of the Ombudsman. It will generally result in unnecessarily lengthy, possibly unfocused, advice which may detract from the investigation and, rather than clarifying the issues, it may not be easy to understand, or at least understand its relevance. If it is not easily understood, it may present a further problem for the Investigator: what to do with it? At worst, extracts may simply be "inserted" into the draft decision if they highlight clinical failings, rather than genuinely informing the Investigator's consideration of the complaint itself. Before we know it, our investigation is hinged around the clinical advice, rather than our analysis of the

complaint. Our decision becomes a “clinical adjudication”, where one was not needed nor asked for, and the issues raised by the complainant are no longer central.

Getting the best from clinical advice

The right level of expertise is essential: specialist clinical advice must always be provided by a specialist.

We must always ask the organisations involved in any complaint to explain what standards they relied on when taking decisions or carrying out treatment and whether those standards were followed or departed from, and why. Advisors must also always be asked to evidence their advice, referring to established guidelines/frameworks/practises.

The investigator must consider the advice they receive; however, they should treat this as evidence rather than being bound by it.

The investigator must own the decision and use their own words to reflect the advice (avoid “our advisor says that …”).

The investigator is responsible for making sure they understand the advice and, if relied upon, for explaining it in plain English.

Proposed threshold for seeking expert professional advice

One or more of the following may apply to a matter under investigation and the investigator must consider these:

1. Can the area of practice about which advice may be sought be sufficiently understood by an intelligent lay person with no training in that area of practice to enable them to come to a view about fault?
2. Can the processes and standards that should be used by someone practicing in that area be sufficiently understood and applied to what happened by an intelligent lay person with no training in that area of practice, to enable them to come to a view about fault.

If the answer to questions 1 or 2 is no, the investigator should take professional advice in order to obtain the view of a professional with expertise in the area of practice on the specific points about which a lay person’s understanding is insufficient.

The Ombudsman’s Clinical Standard

1. When we are considering complaints about clinical care and treatment we consider whether there has been “good clinical care and treatment”. We aim to establish what would have been good clinical care and treatment in the situation complained about and to decide whether the care and treatment complained about fell short of that.

2. We will seek to establish what constituted good clinical care and treatment on the facts of the case by reference to a range of material, including relevant standards or guidance, the accounts of the complainant and the clinician or organisation complained about and any other relevant records and information.

3. Relevant standards or guidance we may consider include National Institute for Health and Care Excellence guidance, clinical pathways, professional regulators’ Codes of Practice and guidance, guidance from Royal Colleges, local protocols or policies, and

published research including clinical text books or research reported in peer review journal articles.

4. In deciding whether a standard or guidance was relevant in the situation complained about we will consider factors such as whether it was in place at the time of the events complained about and whether it was applicable to the care and treatment the person received and to the setting in which the care and treatment took place.

5. We will ask the clinician or organisation complained about to tell us what if any standards or guidance they based their practice on, whether they followed them or departed from them in the situation complained about and why. If there is a relevant standard or guidance and the clinical decisions, actions and judgements do not appear to have been in line with it, we will consider what evidence there may be to explain this. We will reach a decision about whether there has been good clinical care and treatment. In doing so we will consider the explanations of those complained about and balance them against the relevant standards or guidance.

6. We will also consider the 'Principles of Good Administration' insofar as they apply to the clinical context.

Obtaining Clinical advice

Clinical advice is arranged through PHSO. JW Investigators request clinical advice using the Clinical Advice Request form on ECHO.

There are two types of clinical advice:

- A documented discussion – where the investigator will talk through the issue with a clinical adviser. The investigator then writes up a summary of the discussion which the advisor will check and agree. PHSO's target for a discussion is five days from when the request was allocated to the adviser
- Written advice – the adviser will provide a written explanation of their views. PHSO's target is twenty days from when the request was allocated to the adviser.

Where we have emailed a clinical advice request, we should telephone and check that it has been received. Emails to the clinical advice team should be kept under 10mB.

If you are unsure what type of clinical advice you might need, you should contact one of the team leaders to discuss the issue, their contact details are available on the contact sheet.

Investigators may also decide to see a clinical adviser informally (a 'pop-over') for advice about making enquiries about the case. Any advice gathered during a 'pop over' cannot be used as evidence to inform a decision; only documented discussions and written advice can. Where health records are required by the clinical advisers, these will normally be sent to them by the JWT electronically. Investigators should also record in ECHO that clinical advice has been requested and the date it was provided (see a guide to using ECHO for joint working).

The Ombudsmen will not routinely share the name or personal details of a clinical adviser. This is to protect the adviser's personal data and reduce the risk of them being approached within the context of their NHS work. The Information Commissioner's Office (ICO) has supported this position in a number of judgements it has made.

In the event that a JWT investigator decides to share a copy of the clinical advice with a complainant, they should first redact the adviser's personal details.

There is also a spreadsheet here to record any issues with obtaining clinical advice. The information from this spreadsheet is used to feedback to the Clinical Advice Team.

Is there an alternative right/remedy?

We cannot investigate complaints where the PA has used an alternative remedy

Where there is an alternative remedy that hasn't been used, we expect the PA to use this rather than the Ombudsmen, unless there are exceptional circumstances

Both the LGA 74 (section 26 (6)) and HSCA 93 (section 4) contain provisions to ensure people do not ask the Ombudsmen to intervene where they have already had recourse to an alternative remedy, or would be better served by doing so. In a nutshell, both Acts say:

> *The Ombudsmen will not normally investigate a complaint when someone could appeal a matter in court, to a Tribunal or to a Government Minister. However, the may decide to investigate if they consider it would be unreasonable to expect the person to go to pursue that alternative remedy.*

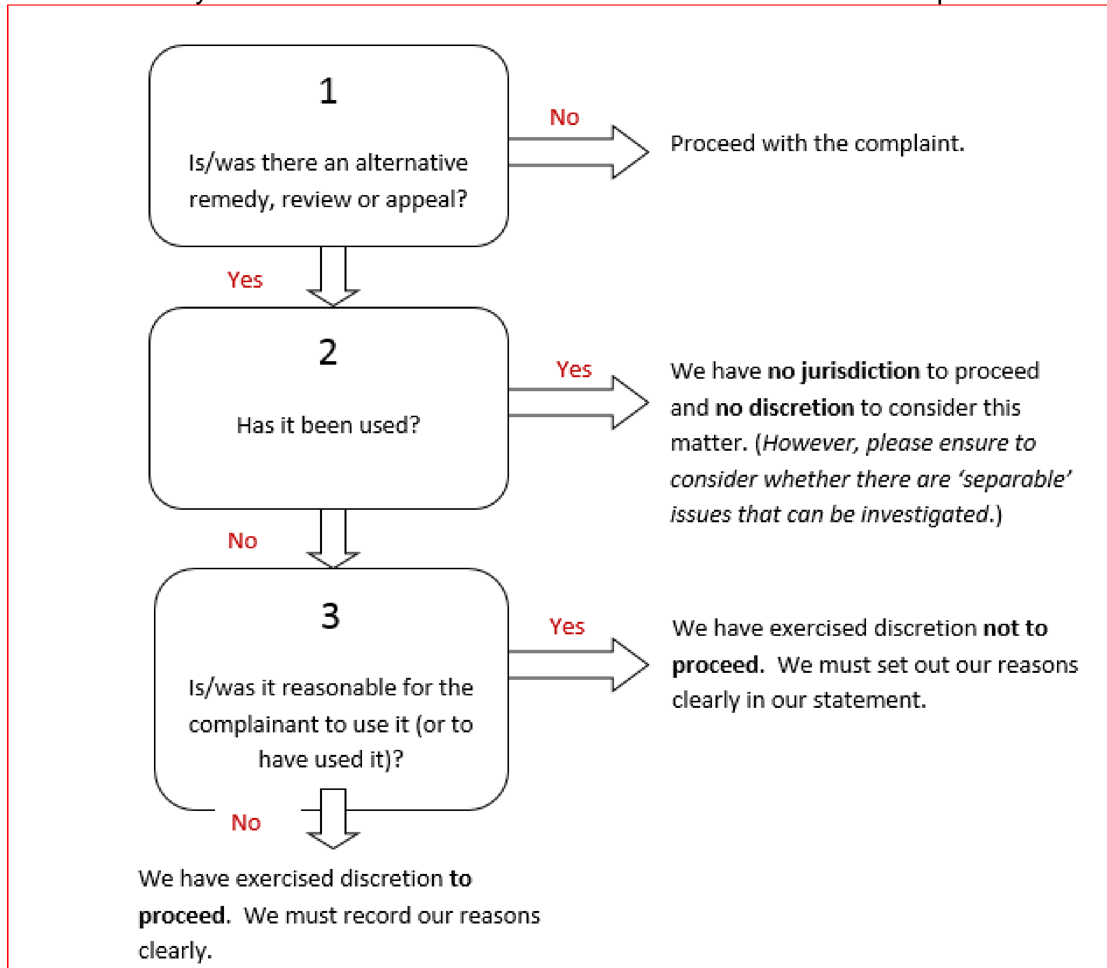
The jurisdictional test (could we investigate) is separate from the discretionary test (should we investigate).

Where someone has an alternative legal remedy, we would usually expect them to use it. We should only exercise our discretion over these issues after carefully exploring the reasons why it would not be reasonable for the person complaining to do so. The Court of Appeal have previously criticised the Parliamentary and Health Service Ombudsman for failing to properly consider whether it was reasonable for a complainant to pursue an alternative legal remedy before deciding to exercise his discretion. We may decide to exercise our discretion because:

- The complainant was unaware of the right of appeal and the authority failed to advise them of it.
- The complainant was prevented by absence, illness or some other incapacity from resorting to appeal.
- There is no possibility of bringing an out-of-time appeal and there are good reasons why the right was not exercised earlier.
- The legal costs are likely to be high compared with the benefit claimed (unless the complaint turns on a point of law which is unclear, or disputed statutory interpretation).
- The complainant wants a remedy which the Court cannot provide e.g. an apology. However, where this form of analysis is the basis for an investigation, then this should be borne in mind throughout the investigation. In these circumstances, the rationale for investigation should be recorded. Where it is considered that a non-monetary result is the only basis on which an investigation is commenced, it would not be proper for the LGO to recommend a financial payment (see JR55 [2016] UKSC 22.)

Any consideration about whether it is reasonable for a complainant to pursue an alternative legal remedy or where we decide to exercise our discretion should be properly recorded in Notes and Analysis and should also be briefly explained within the decision statement.

We have no jurisdiction to investigate if the complainant has already used their alternative legal remedy, unless those proceedings were misconceived[1]. The JWT needs to be mindful not to conduct an investigation which might trespass in any way on the jurisdiction of the courts or of any tribunals. In order to do this we need to consider three questions:



What do we mean by 'separable'?

There may be cases where an element of the complaint may be distinguished from the matter in respect of which the complainant had resorted to an alternative remedy. But caution is needed to ensure that there is a properly justified decision for the separation of the complaint and there is no danger of the Ombudsman deciding matters which have already, directly or indirectly, been adjudicated on by a tribunal, minister or judge. It is essential to check the papers to ensure that this is the case. This will include any judgment, transcript or decision. Where there have been judicial review proceedings, the application to the court and any reply by the respondent are key documents. Where there is a suggestion that an

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[1] Misconceived proceedings

Where proceedings that have been taken are misconceived the Ombudsman retains jurisdiction. Misconceived proceedings are those where the action taken does not amount to the pursuit of an available right or remedy. For example, an application for permission to judicially review a council's decision, claiming negligence by the council and seeking compensation for damage/injury would be misconceived because there is no jurisdiction to consider such claims in the judicial review court. Likewise, proceedings may be misconceived where for other reasons the appeal or other action is struck out by the court or a tribunal at a preliminary stage because there is no legal basis for the action. Misconceived proceedings would not include those that were simply hopeless on the merits, for example a planning appeal made on valid grounds but which was bound to fail on the facts.

element of the complaint may have been considered in this way it is advisable to look further into relevant correspondence or formal evidence.

Where the litigation has not gone beyond the initial stages of lodging papers at court/tribunal, there is less material upon which a decision about separation of a complaint might be taken. In cases of uncertainty reference should be made to a manager or legal advice should be sought.

When considering whether the subject matter is properly separable from a matter which has been the subject of ALR remember that we do not have jurisdiction to investigate the consequences of a decision if the decision itself is excluded by section 26(6) of the 1974 Act or by section 4 of the HSCA 93. (see *R (on the application of ER)* v *The Commissioner for Local Government Administration* [2014] EWCA Civ 1407.)

If there is any doubt about whether ALR should apply in a particular case, this should be escalated to the Assistant Ombudsman.

Who is the body in jurisdiction in joint working cases?

1. LGSCO generally takes the view that the body in jurisdiction is the one whose statutory function is being performed, whereas PHSO usually registers the case against the body that provided the service. This is based on the enabling legislation of each Ombudsman, as described below.

2. Section 25(6) and (7) of the Local Government Act 1974 provides for where an authority exercises a function entirely or partly by means of an arrangement with another person. Section 25(7) says

   > *“action taken by or on behalf of the other person in carrying out the arrangement shall be treated as action taken (a) on behalf of the authority, and (b) in the exercise of the authority’s function”.*

3. The key provisions of section 26 also make clear that the matters subject to investigation by the LGSCO relate to the exercise of an authority's functions or service failure in respect of a service which it was the authority's function to provide. In this way, the legislation ties LGSCO’s investigation process to the authority itself and as a result, LGSCO’s practice is to determine who the body in jurisdiction is based on statutory function. ‘Function’ within a local government context is a concept which embraces all the duties and powers of a local authority.

4. Part 3A of the Local Government Act 1974 applies directly to providers of adult social care. Section 34A defines who an adult social care provider is and also contains similar provisions to those in Part 3 in relation to the actions taken by another person on behalf of the adult social care provider.

5. PHSO’s enabling legislation gives it scope to treat the provider of a service as the body in jurisdiction, and so for example "independent providers" with no statutory function to provide a service, may fall within PHSO's jurisdiction. Section 2B(1)(a) of the Health Service Commissioners Act states

   > *“Persons are subject to investigation by the Health Service Commissioner for England if (a) they are or were at the time of the actions complained of persons (whether individuals or bodies) providing services in England under arrangements with health service bodies or family health service providers.”*
   >
   > .

6. Thus, PHSO’s practice is to register complaints against the body that provided the service. There is also scope for "any other action" taken by or on behalf of a "health service body" to be investigated further to sections 2(1) and 3(1)(c) of the Health Service Commissioners Act.

Practical application

7. When a complaint is received that may be joint, JWA will conduct their normal checks on it, including for example, the time bar, whether another agency is better placed to consider the matter, consent, prematurity and the possible exercise of discretion.

8. In addition, they will consider which bodies should be treated as within jurisdiction. As part of this, they may consider whether there are any formal or informal arrangements between the NHS and the local authority and the nature of those arrangements.

9. Provided a local authority or NHS body has performed a function or made decisions that someone complains about (and subject to the other more general assessment considerations referred to above), the JWT will register a complaint against that body. For health cases, it may also register the complaint against a body that has a statutory function in relation to the actions complained of (for example where the complaint relates to section 117 because although CCGs contract Trusts to provide and coordinate the health element of aftercare services, the CCG retains responsibility for ensuring the quality of them). Responsibility for the actions complained of will remain under review throughout the life of the complaint, as new information may lead us to decide that other bodies, other than those originally complained about or identified, should be included in the complaint.

10. If there is a challenge about whether a local authority should be a body in jurisdiction, local authorities are granted a 'general power of competence' by section 1(1) of the Localism Act 2011 which states "*A local authority has the power to do anything that individuals generally may do".* This allows local authorities to do anything not specifically prohibited by legislation, subject to public policy principles. Therefore, even where it is unclear at the outset whether a council's actions arise from a statutory duty, the JWT can still investigate the actions of the council, where it is alleged that there was fault which led to injustice. This is because the LGSCO's jurisdiction relates to authority functions, and function goes wider than mere statutory duties because it also embraces powers.

Section 75 agreements

Section 75 of the NHS Act 2006 allows NHS organisations and councils to arrange to delegate their functions to one another. These arrangements are known as Section 75 Agreements and under them, NHS organisations can take on the provision of social work services which are normally the responsibility of councils.

JWT will consider, in a complaint involving the NHS and the council, whether there are formal or informal arrangements between the two bodies and the nature of those arrangements. Importantly, subsection 5 of section 75 says the NHS and councils remain liable for the exercise of their own functions. Therefore, a complaint will be registered against both bodies.

Where the NHS and council work together under partnership arrangements and the distinction between roles and responsibilities is unclear, we will not spend disproportionate time deciding individual responsibility. In these situations, if we find fault we will attribute it to the partnership as a whole and expect each body to contribute to any proposed remedies.

GP contracts

There are two types of GP contracts and the type of contract affects how we investigate complaints about GP's:

- PMS (Personal Medical Services) – where the NHS England contract is with the individual GP so the complaint is against that GP, rather than the practice
- GMS (General Medical Services) – where the NHS England contract is with the practice, so the complaint would be against the practice as a whole

However, if the GP contract is a PMS contract, but the issue complained about is about matters which fall under a corporate responsibility, for example complaint handling or information leaflets, then the complaint should be registered against the practice rather than the specific GP.

If the complaint is about a number of GPs at a practice and each of them hold an individual PMS contract, we should register the complaint against each of those GPs.

If a GP has left a practice and we receive a complaint about their conduct at their former practice, we should contact them at their new practice to clarify the most appropriate method of communicating with them to ensure that we can gather the information we need, but without compromising the complainant's personal data.

NB: if we receive a complaint about a GP, but they stopped practicing 3+ years ago, the complaint is out of remit.

Complaints involving Funded Nursing Care (FNC) or Continuing Health Care funding (CHC)

FNC

Where a complaint involves a service which should be funded by FNC, this would usually indicate that the provider would have been delivering that service as a health provider, even if the funding itself was not claimed. However, a decision about this will depend on the circumstances of each case and we may alternatively decide that the provider should be considered under the LGA 74, dependent on how the service was commissioned.

CHC

If we receive a complaint where services were provided by a care home and either self funded or commissioned and paid for by a council, but then CHC funding has retrospectively been applied, we would deal with that body in jurisdiction as a health provider for those services covered by the CHC funding.

Appendix One – NHS Structures

The Secretary of State for Health
The Secretary of State has overall responsibility for the work of the Department of Health (DH). DH provides strategic leadership for public health, the NHS and social care in England.

The Department of Health (DH)

The DH is responsible for strategic leadership and funding for both health and social care in England. The DH is a ministerial department, supported by 23 agencies and public bodies.

NHS England

NHS England is an independent body, at arm's length to the government. Its main role is to set the priorities and direction of the NHS and to improve health and care outcomes for people in England.

NHS England is the commissioner for primary care services such as GPs, pharmacists and dentists, including military health services and some specialised services.

As part of the NHS Five Year Forward View, primary care co-commissioning was introduced. An example of this is NHS England inviting clinical commissioning groups (CCGs) to take on an increased role in the commissioning of GP services.

NHS England manages around £100 billion of the overall NHS budget and ensures that organisations are spending the allocated funds effectively. Resources are allocated to CCGs.

Clinical commissioning groups (CCGs)

CCGs replaced primary care trusts (PCT's) on April 1 2013. CCGs are clinically led statutory NHS bodies responsible for the planning and commissioning of healthcare services for their local area. CCG members include GPs and other clinicians, such as nurses and consultants. They are responsible for about 60% of the NHS budget, commission most secondary care services, and play a part in the commissioning of GP services. The secondary care services commissioned by CCGs are:

- planned hospital care
- rehabilitative care
- urgent and emergency care (including out-of-hours and NHS 111)
- most community health services
- mental health services and learning disability services

CCGs can commission any service provider that meets NHS standards and costs. These can be NHS hospitals, social enterprises, charities or private sector providers. However, they must be assured of the quality of services they commission, taking into account both National Institute for Health and Care Excellence (NICE) guidelines and the Care Quality Commission's (CQC) data about service providers.

Both NHS England and CCGs have a duty to involve their patients, carers and the public in decisions about the services they commission.

Health and wellbeing boards

Health and wellbeing boards were established by local authorities to act as a forum for local commissioners across the NHS, social care, public health and other services. The boards are intended to:

- increase democratic input into strategic decisions about health and wellbeing services
- strengthen working relationships between health and social care
- encourage integrated commissioning of health and social care services

Public Health England (PHE)

PHE provides national leadership and expert services to support public health, and also works with local government and the NHS to respond to emergencies. PHE:

- co-ordinates a national public health service and delivers some elements of this
- builds an evidence base to support local public health services
- supports the public to make healthier choices
- provides leadership to the public health delivery system
- supports the development of the public health workforce

Vanguards

Vanguards were introduced in 2015 as part of the NHS Five Year Forward View. The 50 chosen vanguards are tasked to develop new care models and potentially redesign the health and care system. There are five types of vanguards:

- integrated primary and acute care systems – joining up GP, hospital, community and mental health services
- multispecialty community providers – moving specialist care out of hospitals into the community
- enhanced health in care homes – offering older people better, joined up health, care and rehabilitation services
- urgent and emergency care – new approaches to improve the coordination of services and reduce pressure on A&E departments
- acute care collaborations – linking local hospitals together to improve their clinical and financial viability, reducing variation in care and efficiency.

Regulation – safeguarding people's interests

Responsibility for regulating particular aspects of care is now shared across a number of different bodies, such as:

- the CQC
- NHS Improvement – an umbrella organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams

- individual professional regulatory bodies, such as the General Medical Council, Nursing and Midwifery Council, General Dental Council and the Health and Care Professions Council
- other regulatory, audit and inspection bodies – some of which are related to healthcare and some specific to the NHS

Appendix Two – PHSO decision reasons

High level Group	Decision Detail	Decision Letters	Publication
Holding Decision	Premature decision - advised	Referred back for local resolution	Referred back for local resolution
	Premature decision - referred to BinJ		
	Premature – Local resolution on-going		
	Premature – Pre-second tier		
	Premature – Local resolution not started		
	Premature – Resolution		
	Premature – Local resolution response not fit for purpose		
	Premature – Further work required by body		
	Insufficient information to proceed and PA advised	Incomplete/Invalid	Incomplete/Invalid
Invalid/Forwarded Decisions	Body not in jurisdiction	Advice Given	Advice Given
	Previously considered and decided		
	IU case accepted for JWI	Not included	
	IU case NOT accepted for JWI		
	Forwarded to investigation unit		
PHSO	Further work required by organisation	Upheld: No further action	Upheld
	Mediated outcome - Complaint remedied without findings being made		
	Not upheld - No maladministration or service failure	Not Upheld: No maladministration	Not Upheld
	Not upheld - Failings found but already accepted and remedied by organisation	Not Upheld: Remedy already provided	
	Partly upheld - Failings found but no injustice	Upheld: Maladministration , no injustice	Upheld
	Partly upheld - Failings found but not injustice claimed		
	Partly upheld - Multi-strand complaint	Upheld: Maladministration and injustice	
	Upheld - Failings found leading to an unremedied injustice		
	Discontinued	Closed after initial enquiries - no further action	Closed after initial enquiries
	Other		
PHSO Assessment	Out of remit – Ineligible complainant	Closed after initial enquiries - out of jurisdiction	Closed after initial enquiries
	Out of remit – Body out of jurisdiction		
	Out of remit – Exercise of judicial/legislative functions		
	Out of remit – Commencement/conduct of civil/criminal proceedings		
	Out of remit – Commercial/contractual matters		
	Out of remit – Public service personnel matters		

	Out of remit – Pre-1996 clinical matters Out of remit – Private health care (not NHS funded) Out of remit – Three year rule Out of remit – Alternative legal remedy achieved Out of remit – Other Not properly made – not in writing Not properly made – Resolution – not properly made		
	Specific discretion – Not suitable representative Specific discretion – Out of time Specific discretion – Reasonable to pursue legal remedy General discretion – No indication of maladministration General discretion – No evidence of unremedied injustice General discretion – No evidence of unremedied injustice – Complaint resolved by PHSO General discretion – Other dispute resolution forum appropriate General discretion – Other reason to decline General discretion - what more can we reasonably achieve General discretion - resolution Separated - Single Council (no health case to investigate) Separated - Single Health (no Council to investigate) Separated - Referred back to PHSO, Council case closed at assessment Separated - Referred back to PHSO, Council case forwarded for LGO investigation Separated - Referred back to PHSO, LGO has already investigated	Closed after initial enquiries - no further action	Closed after initial enquiries

Appendix Three – using ECHO for joint working

Joint Working Screen

Saving the Joint Working screen adds a flag to the banner at the top of a case so joint working cases are easier to identify.

Status: Open at Investigation Person/s Affected: Bishop A Pennifather MP : Baron Hardup BinJ: Ex London Residuary Category: Adult Care Services Sub-Category: Council: independent living Team: IT5 Owner : Anne Flegg JW Body : PHSO RA: Bishop Pennifather (Visual: telephone contact) MP Involved Preferred Case Contact Method: Letter

The joint working screen looks like this:

Joint Working Details

Save Cancel Delete

Record 1 of 1

JW Team Coordinator * Select

Received at JW Body

JWTC Notified Target: 27/01/2019 Actual:

Statutory Letter Sent Target: Actual:

No longer Joint Working

JW Body PHSO

JW Body Reference

Allocation Date

Allocated To Select

Outcome

Outcome Date

Save Cancel Delete

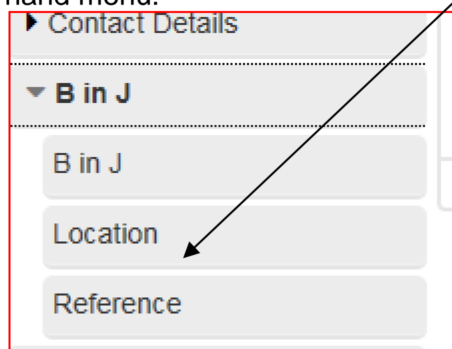
Field Name	What it's for/how to use it
JW Team Coordinator	This field automatically defaults to JWTC. When the screen is saved it sets a task for her to inform her that a new JW case has been received.
Received at JW Body	This field is to record the date that PHSO received a case. If a case has been resubmitted, this date should be the resubmitted date, and not the original date of receipt at PHSO. This date is then used to calculate the Statutory Letter Sent Target date.
JWTC notified	The target date defaults to the date the screen is first created and saved. The actual date is when the JW Team Coordinator has completed the work needed to create the new Health cases.
Statutory Letter Sent	The target date is calculated as the date in the Received at JW Body field, plus 50 weeks. PHSO's legislation requires a letter to be sent to a complainant when a case is 52 weeks old and still open to explain why the investigation is taking so long. The target date will create an automatic task for JWATC. Completing that task will populate the actual date field. When a case is reallocated, the task owner will need to be changed to allocated investigator.
JW Body	This defaults to PHSO
JW Body reference	This is the PHSO reference number. Where a case has been resubmitted, PHSO set up a new case instead of re-opening the old one.

	This number will therefore need to be updated on resubmitted cases.
No longer joint working	Sometimes during a joint working assessment, the investigator will identify that the case should not be joint working. They will then add the date to this field which will remove the JW flag from the banner.
Allocation Date	This field is used to enter the date an initial look task is allocated to a JW investigator
Allocated To	The field is used to record who the initial look task is allocated to
Outcome	There are two possible outcomes for an initial look task: Confirmed as Joint Working Not joint working
Outcome Date	This field is used to record the date the initial look task is completed.

NB: where a case was previously closed as premature and is then resubmitted, PHSO set up a new case instead of re-opening the closed case. Therefore, the date the statutory letter is due will be based on the resubmitted date, and not the original date of receipt. JWTCs will amend the 'date received by JW body' field and 'statutory letter target date' fields to reflect the revised dates and update the PHSO reference number.

One case per JW complaint

Each extra BinJ is contained in the location section which you find under BinJ in the left hand menu:



When you click on location, each of the extra joint working BinJs will be displayed:

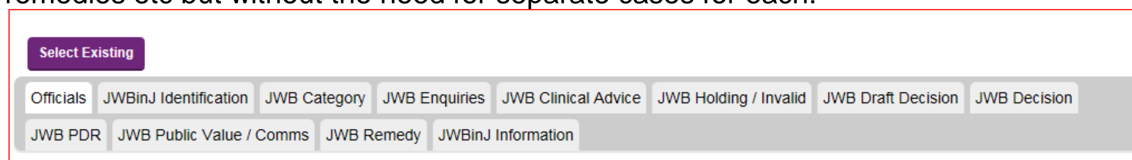
Location

Select Existing

Retired	Organisation	Code	B in J Type	Post Code	Organisation Short Name
All					
No	Rotherham, Doncaster & South Humber NHS Foundation Trust	JWT-DN4 8QN	Health Provider	DN4 8QN	Rotherham, Doncaster & South Humber NHS FT
No	Bradford District Care NHS Foundation Trust	PHSO BD18 3LD	Health Provider	BD18 3LD	Bradford District Care NHS Foundation Trust

Page 1 of 1

Each of the joint working BinJs then has a 'mini' version of various screens which appear below so we can record all the individual information about each JWBinJ, decisions and remedies etc but without the need for separate cases for each:



Publishing joint working cases

Publishing for joint working cases will be managed through the normal publication screen. If any one of the joint working decisions should not be published, then nothing will be published. The publication screen should be completed to flag the case as not for publication.

Here are what each of the joint working tabs show and what they should be used for:

Officials

This is exactly the same as officials in the LGSCO BinJ directory now and it will display the relevant officials, dependent on which BinJ is selected.

Select Existing

Officials | JWBinJ Identification | JWB Category | JWB Enquiries | JWB Clinical Advice | JWB Holding / I
JWB PDR | JWB Public Value / Comms | JWB Remedy | JWBinJ Information

New | Select Existing

Retired	Surname	First Name	Full Address	Job Title	Tel No
All					
No	Complaints Manager		Rotherham, Doncaster & South Humber NHS Foundation Trust Woodfield House, Tickhill Road Site Weston Road DONCASTER		01302 796201 OR 796700

Page 1 of 1

JWBinJ identification

You should use this tab to record any reference number a JW BinJ might have given to the complaint.

Officials | JWBinJ Identification | JWB Category | JWB Enquiries | JWB Clinical Advice | JWB Holding / Invalid | JWB Draft Decision | JWB Decision
JWB PDR | JWB Public Value / Comms | JWB Remedy | JWBinJ Information

Save | Cancel

JWBinJ Reference Number

Save | Cancel

JWB Category

This tab works in exactly the same way as the normal category and sub-category screens. Where a case has been flagged as joint working, you will not be able to close the case without a category and sub-category.
If the category is Adult Social Care and the subcat is 'Private: *.*', then the decision tab should show all the Part 3a decision reasons.
If the Category is Health, the decision tab will show the PHSO decision reasons.
And for any other category/sub-category combinations, then the decision tab will show the Part 3 decision reasons.

Officials | JWBinJ Identification | JWB Category | JWB Enquiries | JWB Clinical Advice | JWB Holding / Invalid | JWB Draft Decision | JWB Decision
JWB PDR | JWB Public Value / Comms | JWB Remedy | JWBinJ Information

Edit | Delete

Category	Health
Jurisdiction	LGA
Sub Category	Hospital acute services: Inpatient

JWB Enquiries

You should use this screen to record when you send enquiries to each of the different joint working BinJs. It will calculate 20 working days in the same way the main workflow screen

does now. It will create a task for you. By completing that task, it will automatically complete the ‘actual date’ on this screen.

Officials | JWBinJ Identification | JWB Category | JWB Enquiries | JWB Clinical Advice | JWB Holding / Invalid | JWB Draft Decision | JWB Decision
JWB PDR | JWB Public Value / Comms | JWB Remedy | JWBinJ Information

Save Cancel

Date Sent

Date Response Due — Target: / Actual:

Save Cancel

JWB Clinical advice

Use this screen to record all clinical advice requests. Completing the target date will set a task for you to remind you when the advice is due back. The target date should be based on the PHSO targets. If you are requesting more than one piece of clinical advice and the advice requests relate to different BinJs, you should complete the clinical advice screen for each of the relevant BinJs.

Officials | JWBinJ Identification | JWB Category | JWB Enquiries | JWB Clinical Advice | JWB Holding / Invalid | JWB Draft Decision | JWB Decision
JWB PDR | JWB Public Value / Comms | JWB Remedy | JWBinJ Information

Save Cancel

Clinical Advice

Date clinical advice request sent

Date of response to clinical advice — Target: / Actual:

Save Cancel

JWB Holding/Invalid

This screen is for use during the JW assessment. Where we have a complaint that we have insufficient information on, or it is premature, or that part of the complaint may be invalid, we can record that decision here for that joint working BinJ.

Save Cancel

Holding Decision

Invalid Decision

Decision Date *

Decision by — Select

Team

Retired	Team
All	
No	IT3
No	IT4
No	IT5
No	IT6
No	IT7
No	IT8
No	INTAKE
No	Comms
No	JWI
No	JWA

Page 2 of 2

Selected Record

Retired: No
Team: JWA

Clear Selection

JWB Draft Decision

Completing this screen with a target date will create a task in the same way as on the usual part of workflow. Marking that task as complete will enter the 'actual date' into this screen.

Officials | JWBinJ Identification | JWB Category | JWB Enquiries | JWB Clinical Advice | JWB Holding / Invalid | JWB Draft Decision | JWB Decision | JWB PDR | JWB Public Value / Comms | JWB Remedy | JWBinJ Information

Save | Cancel

Sent to JWBinJ

Response Due from JWBinJ — Target: Actual:

JWB Decision

This screen has the same functionality as the main workflow decision screen. As mentioned previously, the choice of decision type you will get is driven by the category/sub-category that is entered on the JWB Category tab. If a case is flagged as joint working, you will not be able to close the case unless each of the JWB decision tabs are completed for each of the recorded BinJs.

Save | Cancel | Delete

Field	Value
Jurisdiction	LGA
Decision	PHSO
Decision detail	Specific discretion - Out of
Decision Date *	
Advise Other Bodies	
Reason Not to Advise	Font Name / Real...
Decision by	Select

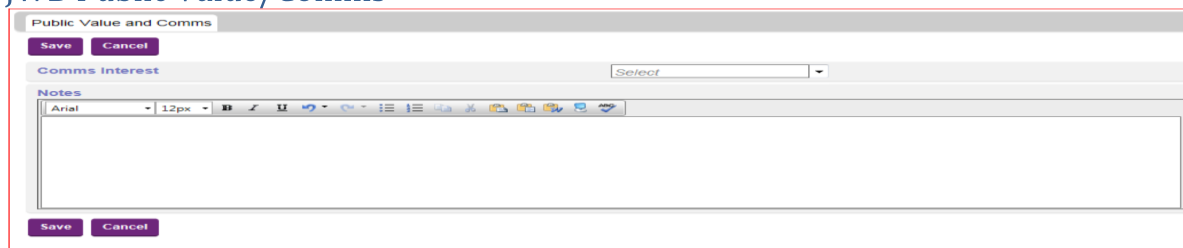
Team

Retired	Team
All	
No	IT3
No	IT4
No	IT5
No	IT6
No	IT7
No	IT8
No	INTAKE
No	Comms
No	JWI

JWB PDR

This screen mirrors the PDR screen in the main part of workflow.

JWB Public Value/Comms



This screen is used to record where a case might be of interest to the Policy and Comms Team. It has a dropdown box and a freetext field. Comms will use the information you provide in a variety of ways, so you need to complete this screen if you think your investigation might be of interest to others in the organisation, or to the outside world. You can fill this screen in whether the case is open or closed. The drop-down choices on the screen are:

- **Media contact (threatened/already contacted) -** if your complainant has either been to the media before complaining to the Ombudsman, or has threatened to contact the media following your decision or draft decision. If your complainant has mentioned contacting the media, please also let Policy and Comms know either by phone or email *as well as* saving this screen (regardless of whether the complainant, REP or BinJ is happy or unhappy with your decision).
- **Topical issue -** if your decision relates to an issue that is currently of interest to the media – whether that be national or more specialist trade press. This could be a controversial issue on the national agenda, or one which relates to Bills or other Parliamentary Committee work, or work being done by Third Sector organisations in the field.
- **Subject: interesting/ unusual/ systemic -** if there is something out of the ordinary about your case – and tell us why. Maybe it is about a very unusual subject which is rarely covered. Alternatively, it may be that this is an area where you are seeing increasing numbers of complaints
- **Remedy: size, unusual, Section 26d -** if you are highlighting the remedy you are recommending is out of the ordinary. We will then be able to check the decision for further details.
- **Legislation** - if your case relates to implementation of new legislation, or where the case has been particularly controversial and required fresh understanding, interpretation, or clarification of existing legislation.
- **Case study**: for cases which could be used in
  - casebook newsletters
  - cases studies for focus or other special interest reports (please also let Policy and Comms know if you think your complainant is happy to speak to media too!)
  - subject forum discussions to identify common themes for future focus reports
  - highlighting good work to stakeholders, policy makers in government, charities and other organisations with whom we work
- **Compliments** – where you receive a compliment we can use in promotional work.
- **Other** (please specify)

JWB Remedy

Remedy Details

Save Cancel

Remedy * Select

Personal Remedy

Service Improvements

1

2

3

Recommendation Date *

Due Date Target: Actual:

Remedy checking comments

LGO satisfied with BinJ actions

- The recording of personal remedies is separate (ie. something specific to the complainant – for example, a payment or a reassessment) to service improvements.
- There are five individual boxes for service improvement remedies.
- A new freetext box is used by Team Coordinators to record the work they undertake in chasing remedies and checking compliance.
- The dropdown box is where we record if we are satisfied that a BinJ has carried out our recommendations to our satisfaction.

JWBinJ Information

B in J Information

Save Cancel

Jurisdiction LGA

BinJ Handling

Other Comments

Save Cancel

We should record information about how bodies deal with us, both health and social care. Use this screen to record information about how a BinJ dealt with us and if there were any issues – for example delays in responding to our enquiries, unreasonable resistance to our findings and recommendations etc.

Creating letters in ECHO

Joint working templates have both the LGSCO and PHSO logos on them. There are separate versions of letters which pick up the details from the location screens – you can spot these because they will have JWBinJ in the name, for example 'draft decision to JWBinJ'.

Appendix four – Remedies

The JWT use LGSCO guidance when considering what an appropriate remedy may be for an LGA 74 body in jurisdiction, and PHSO guidance for remedies against health bodies. PHSO's guidance is available in the PHSO service model. You do not need approval to recommend remedies over £1500 (per para 7.47). If you want to recommend a remedy outside the scale (para 7.43), please detail your reasoning in N&A and task the JWT AO. If you are recommending a remedy outside the PHSO bands, you should feedback to PHSO Typology team. The relevant email address is in the key contacts document.

Apportioning financial remedies

1. Remedies are considered on a case by case basis. Generally, a portion of the remedy should be required from the body with the ultimate statutory responsibility, but the exact split should be determined on the facts.

2. Investigators should avoid spending a disproportionate amount of time assessing how to apportion remedies. It is reasonable to take a broad-brush approach and leave it to the bodies to agree the actual split not involving detailed further investigation.

Appendix Five – PHSO amended scheme of delegation

1. This document supplements the main PHSO Scheme of Delegation and explains how the Ombudsman delegates his powers in respect of decision-making on joint working cases. It should be read in conjunction with the main Scheme, information about its administration and how general and specific powers are delegated.

2. The main Scheme takes precedence over this supplement and reference should be made to it if there is uncertainty about the approval of specific actions or decisions.

3. Joint working covers investigations carried out jointly with the Parliamentary Ombudsman, the Health Services Ombudsman, the Local Government Ombudsman or the Public Services Ombudsman for Wales.

4. The Ombudsman gives a general delegated authority to the staff listed in this supplement to publish anonymised case information about joint working cases.

5. These delegations apply to all staff in joint working teams dealing with joint working cases, regardless of which Ombudsman's office they are actually employed by.

6. The following delegations are classified by action or decision type. The following table illustrates the relevant powers and decisions delegated to staff in accordance with our 'three step' casework process. All of the powers and decisions referred to below are delegated as a matter of course to the Chief Executive and Executive Director of Operations and Investigations.

<table>
<tr><th></th><th>All cases (except significant)</th><th>Significant [2]</th></tr>
<tr><td colspan="3">General powers to obtain information to carry out casework</td></tr>
<tr><td>Power to obtain information for the purposes of:
• Deciding whether we can look at a complaint;
• Deciding whether to accept a case for investigation;
• Carrying out an investigation</td><td colspan="2">• Operations Manager
• Assistant Ombudsman, Joint Working Team
• Investigators, Joint Working Team</td></tr>
<tr><td>Power to obtain information for the purposes of:
• Confirming an organisation has complied with recommendations.</td><td colspan="2">• Operations Manager
• Assistant Ombudsman, Joint Working Team
• Investigators, Joint Working Team</td></tr>
</table>

[2] Significant cases included high risk, high impact, systemic or any cases reserved to the Ombudsman.

	All cases (except significant)	Significant [3]
Step 1: Actions and decisions made at Intake stage		
Powers to decline a case for investigation on the ground(s) that: • The organisation complaint about is outside the Ombudsman's jurisdiction; • The complaint concerns public service personnel matters; • The complaint concerns pre-1996 clinical matters • The complaint concerns Private HealtHSCAre (not NHS funded); • The complaint was not properly made;[4] • The complaint is 'ready for us' [5]	• Operations Manager • Assistant Ombudsman, Joint Working Team • Investigators, Joint Working Team	(If already identified) • Director of Operational Delivery • Director of Quality • Assistant Directors • Senior Investigators • Operations Manager
Step 2: Actions and decisions made at Assessment stage		
Power to decline a case for investigation on the ground(s) that: • The complaint is not in remit[6]; • A person or organisation is not suitable to bring a complaint on behalf on the aggrieved; • The complaint has been made out of time; • The complainant has (or has had) an opportunity to achieve an alternative legal remedy; • The complaint does not show indications that any potential maladministration or service failure has led to an unremedied injustice; • There is an alternative dispute resolution forum available; • There is any other reason why an investigation would not be practicable. Power to investigate a complaint in principle	• Operations Manager • Assistant Ombudsman, Joint Working Team • Investigators, Joint Working Team	• Director of Operational Delivery • Director of Quality • Assistant Directors • Senior Investigators • Operations Manager
Step 3: Actions and decisions made at investigation stage		
Power to confirm a proposed investigation	• Operations Manager	• Director of Operational Delivery

[3] Significant cases included high risk, high impact, systemic or any cases reserved to the Ombudsman.

[4] Not properly made: For Parliamentary complaints this refers to when a complaint has not been made in writing and/or referred to the Ombudsman by a Member of Parliament. For Health complaints, this refers to when a complaint has not been made in writing.

[5] Ready for us: a complaint has completed the local complaint handling stages for the Organisation complained about, which would include any second tier complaint handler where relevant.

[6] See section 2 and Annex A of the Service Model Main Guidance for the categories of complaints that are 'out of remit'.

Approval and issue of draft reports of investigations (including making recommendations) Power to make decisions on the outcome of investigations Power to discontinue an investigation Approval and issue of final reports of investigations	• Assistant Ombudsman, Joint Working Team • Investigators, Joint Working Team	• Director of Quality • Assistant Directors • Senior Investigators • Operations Manager

Where there is an actual or perceived conflict of interest, all delegations herein are withdrawn in relation to that specific conflict, for the individual making the declaration. Where one of the Deputy Ombudsmen has a declared conflict, any exercise of powers will be taken by the other Deputy Ombudsmen in accordance with the Scheme of Delegation.

Signed:

[signature]

Rob Behrens CBE
Parliamentary and Health Service Ombudsman

12 May 2017