



Local Government &
Social Care
OMBUDSMAN

Joint Data Controller Agreement

Between Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman for complaint handling carried out by the Joint Working Team

Document Control

Title:	Joint Data Controller Agreement Between Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman for complaint handling carried out by the Joint Working Team
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1. Parties to the agreement:

Parliamentary and Health Service Ombudsman (PHSO)	Local Government and Social Care Ombudsman (LGSCO)
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2. Contacts

PHSO Sarah Deans (for investigation issues) Angharad Jackson (for data protection issues)	LGSCO Anne Flegg (for investigation issues) Jayne Spence (for data protection issues)
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3. Joint working investigations

The Parliamentary and Health Service Ombudsman and Local Government and Social Care Ombudsman carry out joint assessment and investigations of complaints. The PHSO investigates complaints about NHS services and government departments and its agencies, whilst the LGSCO investigates complaints about councils, other authorities and organisations including school admissions appeal panels and adult social care providers, such as care homes.

Joint investigations by the PHSO and the LGSCO covered by this agreement are about individuals who believe they have been let down by local authorities, private adult social care providers and NHS services. This agreement does not extend to joint PHSO and LGSCO complaints that involve the investigation of government departments and their agencies.

Both organisations will process the personal information outlined in part 5 of this agreement for the purpose of carrying out joint assessment and investigations, in accordance with their investigatory functions.

This casework will be carried out by a team made up of PHSO and LGSCO employees. Joint cases will be conducted on LGSCO IT systems (using ECHO for Case Management).

4. Joint data controllers

The Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007 inserted powers into the Parliamentary Commissioner Act 1967, the Health Service Commissioners Act 1993 and the Local Government Act 1974 to give LGSCO and PHSO specific powers to share information ‘for the purposes of a complaint’ and to conduct joint investigations, subject to the consent of the complainant to do a joint investigation. This consent may initially be obtained over the telephone, but will be followed up by written consent. (See forms at Appendix 1.) Information will only be passed from one organisation to the other once the consent of the individual concerned has been obtained. This consent will be recorded on both organisations’ case management systems. The key legislative provisions of both organisations allowing data sharing are set out in Appendix 2.

A complainant is provided with information about how their personal data will be processed (“fair processing information”) when they submit their complaint, in the form of a privacy statement. When we decide that the Joint Working Team will investigate the complaint, further information will be provided to the complainant on how their data will be handled in a fact sheet from the Joint Working Team.

This will be provided at the point that either PHSO decides to pass the case to LGSCO for a joint working assessment decision or LGSCO decides to pass the case to the joint working assessors for assessment.

Under Article 26 of the General Data Protection Regulation (GDPR), where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. And under Section 5(2) of the Data Protection Act where an organisation is required by law to process personal data, it must retain data controller responsibility for the processing. Although the Joint Team work in the LGSCO environment and using LGSCO systems, PHSO will retain data controller responsibility along with LGSCO. LGSCO and PHSO will therefore be joint data controllers for data held in joint investigations carried out by the Joint Working Team.

Both organisations will receive complaints. Where PHSO receives a complaint which may be a joint working case, they will pass the case to LGSCO for a joint working assessment, along with the necessary consent from the complainant. If LGSCO decides there are elements within the two jurisdictions that should be investigated, the complaint should be handled by the Joint Working Team. Relevant information and evidence gathered by PHSO will be sent to the LGSCO to be stored on ECHO. PHSO will retain copies of this information on their case management system for reference.

Where the LGSCO receives a joint working complaint they will inform PHSO and the Joint Working Team will assess the complaint. If the Joint Working Team decision is that there are health elements that should be investigated, it will be handled by the Joint Working Team.

PHSO may hold other information that is not provided to the LGSCO. This will be stored in line with PHSO case handling procedures.

The information transferred will be held on the LGSCO's ECHO system and all new information will be held on ECHO. No further information will be added to PHSO's case file except any specific copies of clinical or legal advice obtained by PHSO, any complaint correspondence by the complainant or any other party sent directly to PHSO, outcome of assessment information, closure information including the final decision, and compliance details.

5. Personal data to be processed

The following classes of personal data may be processed under this joint data controller agreement:

- personal details of the aggrieved/person affected (PA)
- personal details of any representative making the complaint on behalf of the PA
- family details of the PA
- personal details of other people involved in the case
- lifestyle and social circumstances
- goods and services
- financial details
- employment and education details

- details of complaints, incidents and grievances
- visual images, personal appearance and behaviour
- responses to surveys

We also process special categories of personal data, and other sensitive classes of information that may include:

- physical or mental health details
- racial or ethnic origin
- religious or other beliefs
- political opinions, sexual life
- trade union membership
- offences (including alleged offences)
- criminal and legal proceedings, outcomes and sentences

6. Transmission of personal data

Information received by PHSO that needs to be dealt with by the Joint Working Team will be sent to LGSCO via secure email if possible. If this is initial information needing assessment it will go to the LGSCO's Intake Team, along with the necessary consent to share data.

Secure email will be used, where possible, to transfer material between LGSCO and PHSO. Any paper documents will be scanned and sent electronically where possible otherwise an alternative secure transfer method will be used for example secure courier. If hard copy has to be sent from PHSO to the Joint Working Team, no originals should be included. It will be the responsibility of PHSO to ensure originals are copied and only copies are sent to the Joint Working Team. PHSO will be responsible for returning any original documents to the complainant.

Information transferred to the LGSCO for the attention of the Joint Working Team will, where possible, be scanned and placed on LGSCO's case management system ECHO. Hard copies of correspondence will then be destroyed.

Where joint working cases require clinical or legal advice about particular health elements of a case this will be requested by LGSCO of PHSO advisers, or LGSCO's own retained legal advisors. All documentation will be returned to LGSCO and uploaded to their case management system ECHO. Copies of the advice and associated documentation will be retained on PHSO systems but PHSO will not hold anything in this regard that is not held on ECHO. LGSCO may obtain their own legal advice which will be held on ECHO only.

7. Security of personal data

Both organisations have responsibilities under the General Data Protection Regulation and the Data Protection Act and it is essential that all staff are trained in this regard and understand their responsibilities to ensure personal and organisational compliance in this area.

PHSO and LGSCO have exchanged copies of appropriate information handling policies and both parties are satisfied that there are appropriate policies in place for handling and processing of personal data and Information Security, including the handling of information security breaches. Data Protection training is in place at both organisations and regularly rolled out to all staff.

In the event of a security breach involving joint working information or staff, there must be liaison between the two bodies' Data Protection Officers straightaway so that a risk assessment can be undertaken and decisions made about the best approach in terms of containment of the breach and any requirements to report the breach to the Information Commissioner's Office. Each organisation's Senior Information Risk Owner can decide to report a breach by their own organisation (while simultaneously discussing this with the other organisation). If one organisation's SIRO becomes aware of a breach by the other organisation, they should raise it with the other organisation's Data Protection Officer straightaway, but will reserve the right to report the breach even if the other organisation's SIRO decides not to.

8. Retention of personal data

All casework material associated with joint working investigations will be retained for 12 months after a case is closed. Whilst both organisations have their own retention schedules we have harmonised our approach to retention of joint working casework. A copy of PHSO's retention schedules can be found at:

https://www.ombudsman.org.uk/sites/default/files/Retention_schedule.pdf

The LGSCO's Retention and disposal of casework records policy can be found at:

<https://www.lgo.org.uk/assets/attach/4124/Retention%20and%20disposal%20of%20Ocasework%20records%20April%202017.pdf>

9. Subject access requests

Data subjects can exercise their right to request their personal data from either body, but all subject access requests for data held as part of a joint working case will be dealt with by LGSCO in line with their information request handling policy and procedure. LGSCO will inform PHSO of any requests for information they receive relating to Joint Working Team cases.

10. Amending, transferring or deleting personal data

LGSCO will be responsible for ensuring the personal data held on their systems for the purposes of joint working are handled in accordance with relevant legislation and best practice. This will include, but is not limited to: ensuring inaccurate personal data is amended or deleted as appropriate. LGSCO will inform PHSO about any amendments or deletions which would affect any information they hold, resulting from a data subject exercising their rights in this area. Data subjects can exercise their rights to object to or restrict processing of their personal data, and to have inaccurate personal data rectified with either body.

Both bodies will be equally liable for any compensation claims submitted in accordance with Article 82 of the GDPR.

11. Compliance with this agreement

Any changes can only be made if both parties are in agreement. A copy of this agreement will be published on the websites of both parties to demonstrate an

open and transparent approach to this work. The agreement will be monitored and reviewed annually to ensure it is still relevant or if there are any significant changes in legislation that require it to be updated.

12. Complaints

In the event of a complaint/allegation of the misuse of personal information being processed for the purposes of a joint investigation this will initially be considered by LGSCO, liaising with PHSO as necessary.

13. Signatories

For PHSO:

Full name: Neil Brook

Position: Assistant Director of Customer Services

Date:

For LGSCO:

Full name: Karen Sykes

Position: Director of Investigations, LGSCO

Date:

Appendix 1 - Consent form

Authorisation to share information with the Parliamentary and Health Service Ombudsman

Ref:

I wish the Local Government Ombudsman (LGSCO) to involve the Parliamentary and Health Service Ombudsman (PHSO) in the consideration of my complaint. I agree to the LGSCO's and PHSO's joint working team considering my complaint, and consent to LGSCO and the PHSO sharing any relevant information between one another as part of the consideration of my complaint.

Signed: _____

Name: _____

Date: _____

If you are complaining on behalf of someone else they must sign here if they are capable

I give my consent for the complaint that has been made to LGSCO on my behalf to be shared with the PHSO in the consideration of my complaint. I agree to the LGSCO's and PHSO's joint working team considering my complaint, and consent to LGSCO and the PHSO sharing any relevant information between one another as part of the consideration of my complaint.

Signed: _____

Name: _____

Date: _____

Authorisation to share information with the Local Government and Social Care Ombudsman

Our reference:

I agree to the Parliamentary and Health Service Ombudsman involving the Local Government and Social Care Ombudsman during its look at my complaint. I am happy for the Parliamentary and Health Service Ombudsman to refer my complaint to the Local Government and Social Care Ombudsman on my behalf and consent to the Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman sharing any relevant information between one another as part of their look into my complaint.

Signed: _____

Name: _____

Date: _____

If you are complaining on behalf of someone else they must sign here. If they are unable to sign, please sign on their behalf and let us know.

I agree to the Parliamentary and Health Service Ombudsman involving the Local Government and Social Care Ombudsman during its look at my complaint that has been made to the Parliamentary and Health Service Ombudsman on my behalf. I am happy for the Parliamentary and Health Service Ombudsman to refer my complaint to the Local Government and Social Care Ombudsman on my behalf and I consent to the Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman sharing any relevant information between one another as part of their look into my complaint.

Signed: _____

Name: _____

Date: _____

You can find information on how a joint investigation will be carried out on our website: www.ombudsman.org.uk/improving-public-service/working-with-others

Appendix 2 - key legislative provisions

The following provisions allow the Ombudsmen to share information between their offices. Consent from the person affected must be obtained before agreeing a joint investigation.

Local Government Act 1974

Section 33ZA Collaborative working between Local Commissioners and other Commissioners

(1) If at any stage in the course of conducting an investigation under this Act a Local Commissioner forms the opinion that the complaint relates partly to a matter within the jurisdiction of –

- (a) the Parliamentary Commissioner,
- (b) the Health Service Commissioner for England, or
- (c) both,

he may, subject to subsection (2) below, conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

(2) A Local Commissioner must obtain the consent of the person aggrieved or any person acting on his behalf in accordance with subsection (2) of section 27 of this Act before agreeing to a joint investigation referred to in subsection (1) above.

(3) If a Local Commissioner forms the opinion that a complaint which is being investigated by–

- (a) the Parliamentary Commissioner,
- (b) the Health Service Commissioner, or
- (c) both,

relates partly to a matter within his jurisdiction, he may conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

Section 32

(2) Information obtained by a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, in the course of

or for the purposes of an investigation under this Part of this Act shall not be disclosed except-

- (a) ...
- (aa) for the purposes of a complaint which is being investigated by the Parliamentary Commissioner or the Health Service Commissioner for England (or both)...

Health Service Commissioners Act 1993

18ZA Collaborative working between the Commissioner and other Commissioners

(1) If at any stage in the course of conducting an investigation under this Act the Commissioner forms the opinion that the complaint relates partly to a matter within the jurisdiction of—

- (a) the Parliamentary Commissioner,
- (b) a Local Commissioner, or
- (c) both,

he may, subject to subsection (2), conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

(2) The Commissioner must obtain the consent of the person aggrieved or any person acting on his behalf in accordance with section 9(3) before agreeing to a joint investigation referred to in subsection (1).

(3) If the Commissioner forms the opinion that a complaint which is being investigated by—

- (a) the Parliamentary Commissioner,
- (b) a Local Commissioner, or
- (c) both,

relates partly to a matter within his jurisdiction, he may conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

Section 15. Confidentiality of information

(1) Information obtained by a Commissioner or his officers in the information, course of or for the purposes of an investigation shall not be disclosed except—

- (a) for the purposes of the investigation and any report to be made

in respect of it,
(aa) for the purposes of a complaint which is being investigated by the
Parliamentary Commissioner or a Local Commissioner (or both)