



Local Government
OMBUDSMAN

Joint Data Controller Agreement

*Between Parliamentary and Health Service Ombudsman and the Local Government
Ombudsman for Investigations carried out by the Joint Working Team*

Document Control

| | |
|---------------------|--|
| Title: | Joint Data Controller Agreement Between Parliamentary and Health Service Ombudsman and the Local Government Ombudsman for Investigations carried out by the Joint Working Team |
| Original Author(s): | Hannah Burling |
| Owner: | Rebecca Marsh (PHSO) & Nigel Ellis (LGO) |
| Distribution: | PHSO and LGO (IRM & Joint Working Teams) |
| Reviewed by: | Hilary Pook (LGO), Deborah Ishihara (LGO), Susan Markham (LGO), Tom Stoddart (PHSO), Sarah Deans (PHSO), Katharine Stevenson (PHSO) |
| Quality Assured by: | Mark Lant (PHSO) |

1. Parties to the agreement:

| | |
|---|----------------------------------|
| Parliamentary and Health Service Ombudsman (PHSO) | Local Government Ombudsman (LGO) |
|---|----------------------------------|

2. Contacts

| | |
|--|---|
| PHSO Sarah Deans (for investigation issues) Hannah Burling (for data protection issues) | LGO Deborah Ishihara (for investigation issues) Hilary Pook (for data protection issues) |
|--|---|

3. Joint working investigations

The Parliamentary and Health Service Ombudsman and Local Government Ombudsman carry out joint investigations. The PHSO investigates complaints about NHS services and government departments and its agencies, whilst the LGO 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 LGO 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 LGO 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 investigations, in accordance with their investigatory functions.

This casework will be carried out by a team made up of PHSO and LGO employees. Joint cases will be conducted on LGO 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 LGO 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. (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.

At that stage the complainant will be provided with information about how their personal data will be processed ("fair processing information") for the purpose of investigating their complaint. This will be provided by the organisation seeking consent at the point that the decision is made to transfer the case to the other body for an assessment decision, or to the Joint Working team for investigation.

Under Section 1(4) 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 will be working in the LGO environment and using LGO systems, PHSO will retain data controller responsibility along with LGO. LGO 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 and may need to refer complaints to the other organisation to make an assessment decision.

Where PHSO receives a complaint which may be a joint working case, they will make a referral to LGO for LGO to conduct an assessment. If LGO decides there are elements within their jurisdiction that should be investigated, it should be handled by the Joint Working Team. Information including the assessment decision and any evidence gathered to make it will be sent to the LGO to be stored on ECHO. PHSO will retain copies of this information on their case management system for reference.

Where the LGO receives a complaint which may be a joint working case they will make a referral to PHSO for PHSO to conduct an assessment. If the decision is that there are health elements that should be investigated, it should be handled by the Joint Working Team. Information including the assessment decision and any evidence gathered to make it will be sent to the LGO to be stored on ECHO. PHSO will retain copies of this information on their case management system for reference.

PHSO may hold other information that was provided for the purposes of the assessment that is not provided to the LGO. This will be stored in line with PHSO case handling procedures.

The information transferred will be held on the LGO'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, 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 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 LGO via secure email if possible. If this is initial information needing assessment it will go to the LGO's Intake Team. If it is a transfer to the Joint Working Team it will go to the Joint Working Team Leader or Team Coordinator in the LGOs London office via secure email.

Secure email will be used, where possible, to transfer material between LGO 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 LGO for the attention of the Joint Working Team will be scanned and placed on LGO's case management system ECHO. Hard copies of correspondence will then be destroyed or returned to PHSO, if so requested.

Where joint working cases require clinical or legal advice about particular health elements of a case this will be requested by LGO of PHSO advisers. All documentation will be returned to LGO 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. LGO may obtain their own legal advice which will be held on ECHO only.

7. Security of personal data

Both organisations have responsibilities under the Data Protection Act 1998 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 LGO 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 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 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 is currently kept on ECHO for at least 12 months after a case is closed.

Harmonisation between LGO and PHSO retention and disposal policies is currently being considered. This section will be amended once a standard approach has been established, which will be before any disposal of casework is due.

9. Subject access requests

All subject access requests for data held as part of a joint working case will be dealt with by LGO in line with their information request handling policy and procedure. LGO will consult with PHSO on any requests for information they receive relating to Joint Working Team cases.

10. Amending, transferring or deleting personal data

LGO 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. LGO will inform PHSO about any amendments or deletions which would affect any information they hold.

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 at quarterly intervals 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 LGO, liaising with PHSO as necessary.

13. Signatories

For PHSO:



Full name: Rebecca Marsh

Position: Executive Director for
Operations & Investigations, PHSO

Date: 15 June 2015

For LGO:



Full name: Nigel Ellis

Position: Executive Director of
Operations, LGO

Date: 21 May 2015

Appendix 1 - Consent form

Authorisation to share information with the Parliamentary and Health Service Ombudsman

Ref: _____

I wish the Local Government Ombudsman (LGO) to involve the Parliamentary and Health Service Ombudsman (PHSO) in the consideration of my complaint. I agree for the LGO to refer my complaint to the PHSO on my behalf, and consent to LGO 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 LGO on my behalf to be shared with the PHSO in the consideration of my complaint. I agree for LGO to refer the complaint to the PHSO on my behalf, and consent to LGO and the PHSO sharing any relevant information between one another as part of the consideration of my complaint.

Signed: _____

Name: _____

Date: _____

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)