Joint Working

Briefing note - November 2023

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Background

Joint Working refers to PHSO working with the Local Government and Social Care Ombudsman (LGSCO) on complaints that involve linked health and social care responsibilities. Instead of people having to complain separately to both Ombudsmen, we have a Joint Working Team that can investigate all the health and social care issues within one case if the issues are closely and inextricably linked. This allows us to take a view of all the issues in the round, and provides a single point of contact for the complainant and the organisations being complained about.

The Joint Working Team is made up of investigators from both PHSO and LGSCO. It is managed by the LGSCO, and the PHSO investigators in the team are seconded to LGSCO.

Joint Working cases are often complicated, involving a range of different services and providers. They sometimes involve disputes between health and social care services about who is responsible for meeting a person's needs or providing a service.

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.

Indicators for possible Joint Working – what to look for when you first get a case

A number of topics suggest a case might need Joint Working. You can find a full list in the PHSO *Service Model Guidance* (para 1.43), but the topics below are the most common:

- Discharge from hospital involving health and social care input
- Care provided in care homes (sometimes arranged and commissioned by the Council, but often involving NHS Funded Nursing Care (FNC) or Continuing Healthcare (CHC) funding))
- Re-ablement/intermediate care following discharge from hospital
- Safeguarding
- Mental health services (Community Mental Health Teams, Child and Adolescent Mental Health Services, Care Programme Approach, Partnership Trusts)
- Mental Health Act assessments/Approved Mental Health Professionals (AMHPs)
- Section 117 Mental Health Act
- Learning disabilities
- Special Educational Needs (SEN)/Education Health and Care Plans (EHCPs)
- Deprivation of Liberty Safeguards (DoLS)
- Speech and Language Therapy
- Health Visitors

Appendix One sets out some common examples of Joint Working cases.

What should I do if I think I have a complaint that requires Joint Working?

If you think your case might need to be handled as a Joint Working case, you need to ask the Joint Working team to review the case and decide whether it should be transferred from PHSO to the Joint Working Team to take forward. These requests are called Initial Look Tasks.

To request an Initial Look Task, email [I/S] (via Egress) with the following information:

- brief details of why you think the case might involve joint working
- name of person affected (and representative / complainant if applicable)
- PHSO case reference number AND any previous CMS or VF reference numbers for the complaint
- details of organisations involved (where known)
- copy of PHSO Complaint Form
- copies of substantive complaint responses from organisations

- PHSO staff member contact details (including telephone number)

Please make sure you send the email from your own email address rather than a generic group email address so the Joint Working Team can respond directly back to you with the outcome of the Initial Look Task.

Please note Joint Working cannot access links sent from CMS, so documents need to be sent as attachments. The maximum size for outgoing emails from PHSO to the JW Team is 10MB. Please don't email individual members of the JW Team as we work on a rota basis and this system ensures emails aren't missed when people are on leave or out of the office.

You should get a decision on whether the case should be transferred to the JW Team **within five working days**. If the case is being transferred you will need to get written consent from the complainant (**to be returned within 10 working days). Please see below for guidance** on **Obtaining JW Consent** and **Transferring cases to JW (step-by-step process)**

If you need additional help you can email [I/S] .

The Joint Working Team also have a manual which is available on the LGSCO website.

Obtaining Joint Working Consent

Before transferring a case to the Joint Working Team, you need to contact the complainant / representative to obtain consent. Please go through the information below. This is a requirement at both PHSO and LGSCO to make sure we meet the requirements of the Health Services Commissioners Act 1993 and Local Government Act 1974, and our data protection responsibilities.

Information to be given to a complainant before transferring a case to the Joint Working Team

The Parliamentary and Health Service Ombudsman (PHSO) and the Local Government and Social Care Ombudsman (LGSCO) have the power to share information between organisations where the case needs to be considered by the joint working team. This is set out in sections 15 and 18ZA of the Health Service Commissioners Act 1993 and sections 32 and 33ZA of the Local Government Act 1974.

Please explain that:

- The case appears to include complaints about both health services and council services/care providers
- There is a Joint Working Team which considers complaints that have elements of both health and social care, and that team works under the authority of both PHSO and LGSCO and can make decisions on complaints about councils/care providers and NHS organisations
- You want to ask the Joint Working Team to assess the complaint but you cannot do this without consent. And that consent is for;
- sharing information between PHSO and LGSCO, and

- the Joint Working Team to assess the complaint about the council/care provider and the NHS organisations involved. This may mean them making enquiries to any of those organisations and also issuing decisions about your complaint to them.

You will also send out a follow up Joint Working consent form for the complainant or their representative to complete which needs to be returned within 10 working days. Advise that the case cannot be transferred to the Joint Working Team until we receive this written consent.

If the Joint Working assessment concludes the complaint should be investigated jointly, one investigator from the Joint Working Team will be allocated to investigate both the council/care provider and NHS aspects of the complaint.

If the Joint Working assessment concludes the complaint is not joint, the Joint Working Team will let the complainant or their representative know the outcome and the reasons for their decision.

There may be occasions where the Joint Working Team decide that part of a complaint needs looking at by them, but other parts can be separated off and considered separately by PHSO or LGSCO staff. For example, where a complaint involved a person's hospital stay and discharge. The discharge element would be joint, but the complaint about care and treatment as an inpatient would solely be for PHSO.

There are standard letters you should send to the complainant to explain about Joint Working and consent:

- Intake cases from CMS, "JW requesting written consent – Intake" with "JW Consent Form"
- Primary or Detailed Investigation from CMS "JW requesting written consent – primary and detailed investigation" with "JW Consent Form"

If the complainant does not consent to Joint Working that is their right. You can explain to them any difficulties a lack of Joint Working may cause in terms of consideration of the Council/care provider or NHS body complaint in isolation. However, ultimately we cannot proceed with Joint Working without consent, and we should not put pressure on somebody to provide that consent.

To ensure we meet the requirements of the DPA and GDPR, detailed notes covering the above should be recorded on the complaint record. This ensures we can show that the complainant or their representative gave verbal consent with the full knowledge and understanding of what they were consenting to.

Transferring cases to the Joint Working Team

If the Joint Working Team agrees the case needs to be transferred and you have received consent for Joint Working from the complainant or their representative these are the steps you need to take. There are different processes to follow for Intake cases and for primary or detailed investigation cases.

Transferring the case – Intake

- Complete "JW – Case Transfer Form" in CMS, whilst waiting for written consent to be returned
- Clearly mark on the Transfer Form that the case is at Intake stage, and set out details of the documents and information in CMS that will need to be transferred with the Form in due course
- Record the LGSCO case reference number in CMS in the 'Case Alerts' box. This reference will have been provided by the Joint Working Team when confirming that the case should be transferred to the JW Team
- Close the case in CMS whilst waiting for written consent to be returned, using the closure code 'Joint Working'
- If written consent is received by the Intake caseworker, Intake should email the Transfer Form and supporting docs over to the Joint Working Team Co-ordinator [I/S] by Egress and copy [I/S]. The LGSCO case reference number must be included in the title of the email
- When written consent is returned by post, the Shared Services Business Support Officers will scan the document and email it to [I/S], where a BSO will access CMS and arrange to transfer the case and relevant documentation to the Joint Working Team Co-ordinator [I/S] by Egress. The LGSCO case reference number must be included in the title of the email
- Responsibility for communication with the complainant / representative will remain with the PHSO member of staff until the case has been transferred to the Joint Working Team

Transferring the case – Primary or Detailed Investigation

- Once written consent has been received, complete "JW – Case Transfer Form" in CMS
- Clearly mark on the Transfer Form whether the case is at Primary Investigation or Detailed Investigation stage. Any cases already at Detailed Investigation stage will be prioritised for allocation in the Joint Working Team
- Email the Transfer Form and all relevant complaint documents from CMS to the Joint Working Team Co-ordinator [I/S], by Egress. Please include the LGSCO case reference number in the title of the email – this reference will have been provided by the Joint Working Team when confirming the case should be transferred
- Record the LGSCO case reference number in CMS in the 'Case Alerts' box - add the following yellow banner alert: 'LGSCO ref ……..: 'Joint working case'. All information added to CMS following case transfer to the LGSCO must be forwarded on to the LGSCO Joint Working Team Co-ordinator, [I/S] quoting the LGSCO case reference
- When LGSCO confirms receipt of the Transfer Form and documentation, close the case on CMS using the code 'Joint Working'. You must wait for this confirmation before closing the case

- Responsibility for communication with the complainant / representative will remain with the PHSO member of staff until the case has been transferred to the Joint Working Team and closed down on CMS.

Sending Information with transfers

The Joint Working Team cannot access links to CMS or Sharepoint, so complaint documentation needs to be sent as attachments. If you have any important information within CMS emails, you need to copy and paste the content of the email into a Word document and attach the document.

Maximum size of emails from PHSO to LGSCO

The outgoing email limit from PHSO is 10MB. This includes all the text in the email, the logos in your signature and those of any others in the thread of the email.
If you don't receive an acknowledgement email from the LGSCO, the email is probably too large and has not arrived. If this is the case, please split the attachments over separate emails.

Who are the Joint Working Team?

Manager (Assistant Ombudsman)
Anne Pollard (LGSCO) [I/S]

Joint Working Investigators
[I/S]

Team Co-ordinators
[I/S]

Appendix One

The examples include (1) hospital discharge (2) CAMHS & safeguarding (3) GP practice & safeguarding (4) residential care & CHC (5) SEND and children (6) adult mental health.

1. Hospital discharge, Occupational Therapy assessment, domiciliary (home) care package

Mrs D complained about arrangements for her mother Mrs T's discharge from hospital, including:

- she was discharged to her own home rather than into residential care
- medical staff were not adequately consulted about her mother's needs before the Council arranged the discharge
- the social worker and occupational therapist disagreed about whether Mrs T was safe to go home
- the care package for Mrs T at home was not adequate

Outcome: for Joint Working investigation

The discussions about Mrs T's hospital discharge involved the multi-disciplinary team including medical staff, occupational therapy staff and hospital social workers. A hospital discharge like this involves joint working between health and social care professionals. The home care package arranged for Mrs T was the responsibility of the Council.

Although the final decision about Mrs T's discharge destination and care package was the Council's responsibility, health and social care staff were involved in the assessments and decisions leading up to the hospital discharge. Many NHS Trusts have an Integrated Discharge Team made up of health and social care staff carrying out NHS and Council functions. This complaint needs handling in the JW Team so we can look at the linked actions and responsibilities of the NHS and Council within one case.

2. CAMHS, safeguarding, child protection

Mr L complained an NHS Care Trust did not provide adequate CAMHS support and intervention for his daughter D. He also complained about the Trust's safeguarding referral to the Council about D, the safeguarding investigation, and the Council's decision to put D on a child protection plan.

Outcome: for separate handling by PHSO and LGSCO
The complaints about CAMHS relate to decisions about D's NHS care and support from the Care Trust, and are not inextricably bound up with the other issues. This complaint can be dealt with by PHSO as a health complaint.

The complaint about safeguarding is for the LGSCO (not the JW Team). Although the Care Trust made the safeguarding referral and provided information during the safeguarding process, the Council has overall statutory responsibility for safeguarding, so the complaint about the safeguarding investigation and its outcome (putting D on a child protection plan) is for LGSCO. It is for the Council to decide what evidence it gets during a safeguarding investigation, and what weight to give to that evidence.

3. GP practice, adult safeguarding

Mrs R complained her father's GP Practice and the Council failed to safeguard and support her father Mr B before his death. She said the Council did not robustly investigate her concern that her mother was not appropriately feeding Mr B at home, and the GP Practice did not properly monitor Mr B's weight. Mr B died after losing five stone and developing related health problems.

The Council asked the GP Practice for information about Mr B's health, and the Council and GP Practice agreed the GP Practice would monitor Mr B's weight and report back to the Council.

Outcome: for Joint Working investigation
Although the complaint about the GP Practice's weight monitoring could potentially be handled by PHSO as a clinical issue, this is closely bound up with the Council's actions in terms of safeguarding Mr B. The GP Practice was involved in some of the Council's safeguarding meetings, and there was regular and ongoing contact between the GP Practice and the Council about Mr B. For these reasons, the complaint is most suited to handling in the JW Team, to look at all the linked issues and the claimed injustice together.

4. Residential Home – Council arranged and funded care, then CHC funding

Mr C complained about his late mother's care at Z Residential Home. He said the Home did not manage her nutrition or fluids adequately, and did not manage her pressure areas well. He also said the Home did not manage his mother's risk of falling in the last weeks of her life, or make sure she got adequate pain relief when she was dying. The complaint issues covered the last six months of his mother's life. Mr C said the Council carried out a safeguarding investigation into some of the issues, and he was unhappy with its response. The Council also investigated Mr C's complaints about his mother's care, and provided two responses.

Mrs C's care at the Home was arranged and paid for by the Council until the last month of her life, when she had Fast Track CHC Funding due to her end-of-life status.

Outcome: for Joint Working investigation
Most of the issues relate to the period when Mrs C's care was Council arranged and funded, without NHS involvement. There is also a complaint about the safeguarding investigation, which is the Council's responsibility. These matters are in LGSCO remit.

However, some of the complaint issues cover the last month of Mrs C's life, when her care at the Home was CHC funded and was therefore the responsibility of the NHS and in remit for PHSO. The complaint needs to be handled in the Joint Working Team, looking at the Home's actions for the six month period involving Council and then NHS responsibility due to the CHC funding that came in towards the end of Mrs C's life.

5. Children with Special Educational Needs and Disabilities (SEND)

Ms X's daughter P has complex needs and is supported by various healthcare professionals including physiotherapists. P has an Education Health and Care Plan (EHCP) which sets out her special educational needs and what she requires to meet those needs. Her EHCP includes a requirement for physiotherapy in Section F of the Plan – 'special educational provision'. Her EHCP also includes physiotherapy and occupational therapy in Section G – 'health care provision' required by her disability.

The Council is responsible for making sure the special educational provision set out in Section F of an EHCP is provided, even if this includes health care provision by the NHS.

Ms X complained the Trust's physiotherapists did not work with her or P effectively, and as a result P missed physio sessions for five months. She said she asked for a different physiotherapist but it took three months for this to be arranged. Ms X said she ended up paying for private physiotherapy, and her daughter's health deteriorated because of the gaps in her physical therapy. Ms X also said the physiotherapist did not attend P's annual EHCP review.

Outcome: for Joint Working investigation
A lot of this complaint is about the actions of the Trust and the NHS physiotherapists. However, as P has an EHCP, and as the Council was ultimately responsible for making sure P got the support for her special educational needs set out in her EHCP, the complaint needs to be handled in the JW Team.

6. Adult mental health services, section 117 aftercare (Mental Health Act 1983), treatment for kidney cancer

Mr W complained about the care an NHS Care Trust provided to his father Mr S whilst he was detained under the Mental Health Act 1983. He complained about

changes to his father's medication, and about poor support for his physical health needs. Mr W also complained about plans for Mr S's discharge from the Care Trust hospital into a rehabilitation placement, including how his medication needs would be managed. Mr W's discharge placement was arranged under s117 of the Mental Health Act 1983. Lastly, Mr W complained about how an NHS Acute Trust managed and treated his father's kidney cancer over the same period.

Outcome:
(1) Mental health complaints for Joint Working investigation
(2) Acute Trust complaint about kidney cancer treatment for separate handling by PHSO
The complaints about Mr S's mental health care whilst detained under s2 and s3 of the Mental Health Act could potentially be handled separately by PHSO. However, some of these complaints link into decisions about Mr W's discharge arrangements, and are best looked at within a JW investigation. Mr W's discharge was arranged under s117 of the Mental Health Act. Section 117 places a joint duty on Councils and Integrated Care Boards to provide or arrange free aftercare for people who have been detained under s3 of the MHA. The duty is a joint one regardless of the nature of the person's needs and whether the aftercare services are provided by health or social care organisations.

The complaint about Mr S's kidney cancer treatment should be handled separately by PHSO. Although this physical health care was provided over the same period as Mr S's mental health care and s117 aftercare, the kidney treatment is distinct and separable from the mental health issues. Although it may be simpler and preferable for the complainant to have one investigator looking at all the issues, the JW team is a small specialist team with limited capacity, and we need to separate out complaints when there are health (PHSO) or social care (LGSCO) issues that are not closely linked in with the JW issues. This also means we can ensure investigations are tightly focused.