

Service Model Policy and Guidance: main guidance

Version 6.0

Quality Directorate

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Introduction

1. The Parliamentary and Health Service Ombudsman's casework process is summarised in the [Service Model](#). This guidance provides information about how our casework staff should operate in line with the Service Model.
2. The [Service Charter](#) contains 18 commitments about how we will deliver our service and what people can expect when they bring a complaint to us. The detailed information in the Service Model and this guidance helps us to deliver our service in line with the Charter commitments.
3. The intention of the guidance is to provide an additional layer of detail below the Service Model, with a particular focus on:
 - Requirements from the law (flagged as 'Legal requirement' in the text).
 - Requirements from our own policy (flagged as 'Policy requirement' in the text).
4. Those requirements set the framework within which our casework staff should operate. The guidance is not intended to prescribe the actions or process to be followed across all casework and in all circumstances. Many areas of casework require discretion and judgement and depend on the specific circumstances of the case. Any divergence from the stated requirements in the guidance should be recorded and explained on our case management system; Microsoft Dynamics (MSD).
5. The guidance is divided into the following main sections:
 - Accessing our service
 - Can we look into your case?
 - Should we look into your case?
 - Investigation
6. This main document is also supported by the [Service Model General Guidance](#) and [casework reference library](#). The general guidance covers subject-specific or cross-cutting subjects. The casework reference library focuses on specific subject areas within our casework where separate guidance is required.
7. The guidance references key information about MSD processes and these are highlighted between blue lines in the text. A manual for MSD is available.
8. The guidance is a living document and will be updated on a regular basis.
9. The guidance is owned and maintained, on behalf of Operations, by the Quality Directorate.
10. If you have any feedback or questions about the guidance or related issues then please email: ++ServiceModelGuidance@ombudsman.org.uk

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Section 1. Accessing our service

What can we help with? Complaint for us?

- 1.1 When a request for investigation is received the Customer Service Officer should check on MSD to see if the complainant has contacted us before, and if so, complained about the same organisation. If the Customer Service Officer considers the request is new then they should create a record on MSD and assign the case to themselves. **(Policy requirement)**
-
- 1.2 If the complaint relates to an organisation we cannot investigate or if it is not clear whether the complainant is asking for us to investigate then this should be recorded on MSD as an enquiry. If the complaint relates to an organisation we can look at then this should be recorded on MSD as an assessment. **(Policy requirements)**
- 1.3 If we are copied into correspondence alongside other organisations or individuals, and there is no indication the complainant is asking us to take action or respond, then we will usually record the case as an enquiry.
- 1.4 The Customer Service Officer should consider the correspondence though on a case by case basis and record the case as an assessment instead if appropriate. For example; if the correspondence indicates the complainant is in dispute with the organisation as to whether local resolution is complete.
-
- 1.5 If a Customer Service Officer plans to decline a case for investigation they must first attempt to contact the complainant on the telephone, if a number is available. **(Policy requirement)**
- 1.6 If during telephone contact a complainant expresses a preferred method of communication, then contact should be made that way from then on. **(Policy requirements)**
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- 1.7 Any requested contact preference should be recorded using the preferred method of contact tab on the complainant's MSD record. **(Policy requirement)**
-
- 1.8 If the Customer Service Officer proposes to pass a case for assessment within two weeks of the case arriving with us, they do not need to contact the complainant to discuss it. If the case will not be progressed within two weeks, the Customer Service Officer must make contact with the complainant regardless of what action we later decide to take. **(Policy requirements)**
- 1.9 If the Customer Service Officer contacts the complainant (or representative if appropriate) then they should find out: **(Policy requirements)**
- What is being complained about?
 - The injustice claimed.

- The remedy sought (including if they are seeking financial remedy).
- Why they are unhappy with the organisation's reply to their complaint

1.10 The information listed above should be captured in the complaint summary box on the MSD record.

1.11 The Customer Service Officer should try to capture basic information during this contact: **(Policy requirement)**

- Complainant's name and contact details.
- Names and contact details of other relevant parties (for example, aggrieved, representative, Member of Parliament (MP)).
- Names and contact details of any interested parties (including the details of medical defence organisations who are involved in the case)
- Organisation/individuals complained about.

1.12 Any of the information listed above that cannot be added directly onto the MSD record should be referenced in the complaint summary box.

1.13 The Customer Service Officer should give information to the complainant about what we can and cannot do, so as to manage their expectations and should discuss any reasonable adjustments that might be needed (further information about reasonable adjustments is available in paragraph 1.29). **(Policy requirements)**. If we cannot consider the case (for example it is clearly out of remit) then not all of this information will need to be recorded.

1.14 If it is clearly identifiable to a Customer Service Officer that a complaint received is about Duty of Candour, this should be clearly flagged. Please see [Service Model General Guidance](#) Section 6 for more details.

1.15 If the case is recorded as an assessment and more than one organisation has been complained about then the Customer Service Officer should add one organisation to the case and the multi body button should be selected. The details of any additional organisations complained about should be captured in the complaint summary box. **(Policy requirements)** This includes cases that involve another complaint handler, for example a second tier like the Independent Case Examiner.

Reaching and evidencing our decision

1.16 The Customer Service Officer should look to get as much information as reasonably possible before taking action on a case. This may include approaching the complainant, organisation/s or anyone else we identify who may be able to provide relevant evidence.

- 1.17 By ensuring we have gathered all the relevant evidence, thoroughly considered that evidence and followed the proper casework processes we can clearly demonstrate that we have reached a robust, impartial decision.

Recording information on MSD

- 1.18 Information should be recorded and stored in the appropriate section of the MSD record or in the documents tab and the agreed naming conventions available in Annex I should be used.
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Declining a case when we have had no contact with the complainant

- 1.19 If a Customer Service Officer has made reasonable attempts to contact a complainant, but has been unable to, they should consider if enough information is available to still make a decision. **(Policy requirement)**
- 1.20 If the Customer Service Officer considers we have enough information to decide if the case is out of remit or not ready for us, then this decision and the reasons for it, should be sent to the complainant (and any representatives). **(Policy requirements)** The case can then be closed.
- 1.21 If we do not have enough information to make a decision, but have an email address, we should email the complainant and explain this. A deadline should be set to provide this information, usually under a week. If we receive a request to extend this date it should be considered carefully, especially if made as part of a reasonable adjustment. If a day after the deadline (or agreed extension) the information has still not been received the complaint should be closed as withdrawn. **(Policy requirement)**
- 1.22 If we do not have an email address then the Customer Service Officer should contact the complainant in writing explaining we need further information before we can consider their case. The case should then be closed as withdrawn. **(Policy requirement)**

If the case appears ready for Assessment

- 1.23 If the Customer Service Officer considers a case should be passed to an Assessor then this decision should be recorded on MSD. This record should include a summary of the complaint and an explanation of how we have reached our decision. **(Policy requirement)**
- 1.24 The Customer Service Officer should ensure enough information is recorded before the case is passed for assessment **(Policy requirement)**. This includes:
- A completed complaint form or information recorded on file that answers all of the complaint form's questions.

- All complaint responses from the organisation including a transcript of any meeting requests (including a second tier or other complaint handler response if applicable).
 - Consent from the aggrieved or complainant where they are being represented.
 - A telephone number for the representative and complainant.
- 1.25 When this information is not recorded it should usually be requested over the telephone. Consideration should be given though, to the complainant's preferred method of communication. **(Policy requirements)**
- 1.26 Sometimes this information may not be readily available, or a request needs to be made in writing. If minimal information is missing (such as a telephone number or the amount of compensation sought) then the Customer Service Officer should write to the complainant explaining this. A date should be set for when this will be provided, normally around a week. The case should then be passed for assessment. **(Policy requirements)**
- 1.27 If a large amount of information is missing, then after contacting the complainant to request this, the case should be closed as withdrawn. The case should then be re-opened once this information has been received. **(Policy requirements)**

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- 1.28 If a Customer Service Officer decides a case should be sent for an assessment then they will first need to complete the initial section of the assessment record on MSD. This includes adding the details of the aggrieved and their representative if required. A casework category, complaint type and profession group¹ should also be added to the case. **(Policy requirements)**
-

Telephone decisions and signposting

- 1.29 If the Customer Service Officer speaks to the complainant on the telephone, and is able to give our decision, then they should do so. The Customer Service Officer should check whether the complainant is happy to not receive our decision in writing. If this is the case then the Customer Service Officer must ensure that any representatives (including MPs) are still informed. If the complainant asks for the decision in writing then the Customer Service Officer must provide this. If the decision is to pass the case for assessment, then a copy of our acknowledgement letter should also be sent to the complainant. **(Policy requirements)**
- 1.30 If the Customer Service Officer is deciding not to investigate a complaint then they should advise the complainant on what next steps to take. This may include signposting back to the organisation or suggesting a suitable advocacy agency. If a case is out of remit then the Customer Service

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Officer should try to identify another organisation, if possible, that can help and then direct the complainant to it. **(Policy requirements)**

Triage

- 1.31 The Customer Service Officer should complete a triage of the case before passing it for assessment. **(Policy requirement)** This involves considering whether the case concerns a potential avoidable death, a serious injustice, or if the case needs to be dealt with as a priority (referred to as urgent on MSD).
 - 1.32 At this stage the Customer Service Officer only needs to consider if the complainant is claiming a potential avoidable death or serious injustice and they do not need to decide if this claim is reasonable. Further information about potentially avoidable death cases is available at paragraph 3.27.
 - 1.33 In exceptional circumstances we may decide a case should be prioritised for assessment (such as when a complainant has a terminal illness). If the Customer Service Officer considers this appropriate they should discuss this with their line manager first. They should then ensure this decision is fully audited on MSD. **(Policy requirements)**
 - 1.34 If the Customer Service Officer does not consider they have enough information to answer one or more of the triage questions then they should answer no.
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Providing additional support for complainants

- 1.35 There will be occasions when a complainant may request or need further support from us in accessing the complaints process or bringing us their complaint. In these instances the Customer Service Officer should take a proportionate approach to providing assistance which will depend on the individual complainant's needs. Ways we can offer help include:
 - Forwarding a complaint to an organisation complained about.
 - Providing details of an advocacy service.
 - Helping to get in contact with an MP and assisting with the referral process if appropriate (this must be made in writing to the MP).
 - Completing a complaint form for the complainant (this should then be sent to them for a signature).

Requests for reasonable adjustments under the Equality Act 2010

- 1.36 If we receive a request for a reasonable adjustment, at any stage of the casework process, then it must be fully considered under the Equality Act and its related Codes of Practice. **(Legal requirement)**

- 1.37 Any request for a reasonable adjustment should be added to the case. If we decide an adjustment is reasonable we should clearly record what we have agreed to do in the accessibility issues section on the complainant's MSD record as well as in the task section of the complainant's current case. Any questions about agreeing an adjustment should be escalated through line-management. **(Policy requirements)**
- 1.38 If we decide an adjustment is not reasonable then we should record the reasons why in both the task section of the complainant's MSD record and the case. We should also consider if there are other ways we can assist the complainant. The Legal Team must be informed if we decide an adjustment is not reasonable. **(Policy requirements)**

Joint working cases

- 1.39 We must share cases with other Ombudsman where we identify that a complaint may partly fall within their jurisdiction. **(Legal requirement)** Most of the joint working cases we receive will involve the Local Government Ombudsman (LGO).
- 1.40 If a Customer Service Officer identifies a case is joint working, then this should be recorded as a 'joint case' on the MSD. If the case is joint working but not with the LGO then it can either be closed or passed for assessment as appropriate and does not need to be referred to the joint working team. **(Policy requirements)**

Joint working with the LGO

- 1.41 We have a joint working team, consisting of Assessors and Investigators across both our Office and the LGO, who consider cases which involve both NHS and local authority funded actions.
- 1.42 If a Customer Service Officer identifies that a properly made case may require joint working then this must first be discussed with the Investigation Manager of the joint working team. **(Policy requirement)** The Investigation Manager will then decide whether the case requires joint working and if so, whether it should be transferred to the team.
- 1.43 Joint working cases that are premature will usually need to complete the complaints process before being considered further. The Investigation Manager can decide to transfer a premature case to the Joint Working team if appropriate. (For example the local authority complaints procedure has been concluded and further enquiries need to be made).
- 1.44 If the Investigation Manager decides the case should be passed to the joint working team, then the Customer Service Officer must contact the

complainant and ask for their consent for us to jointly work with the LGO. **(Policy requirement)**

- 1.45 The Customer Service Officer should first try to get consent from the complainant via telephone. If a complainant has told us they have a preferred method of communication though, then the request should be made this way instead. This is even in circumstances where we have a telephone number recorded. If consent is received over the telephone, then this must be recorded on MSD. **(Policy requirements)**
- 1.46 If consent is requested in writing, then a deadline should be given, usually under a week, for this to be received. If consent has not been received by this deadline then the case should be closed as 'withdrawn'. The case should then be re-opened once consent has been received. **(Policy requirements)**
- 1.47 Once consent is received the Customer Service Officer should complete the [Joint Working Case Transfer Form](#). This should then be sent via email to the intake team at the LGO and copied to the joint working team's Business Support Officer. **(Policy requirements)**
- 1.48 The case should be allocated to one of the Assessors on the joint working team. If the decision is made that the case requires investigation, then it should be allocated to an Investigator on the team. **(Policy requirement)** The case will then be completed on LGO's own systems.
- 1.49 The joint working teams Business Support Officer should record on the MSD any decisions made at assessment and investigations stage (if applicable) and close the case once it is complete. **(Policy requirement)**

Joint working cases that are received on the phone

- 1.50 If a Customer Service Officer identifies a case may require joint working while taking a call on the advice line, then they should explain this to the complainant. They should ask for consent while on the call and record on the MSD if permission is given. **(Policy requirements)** If the telephone call relates to a new case it can be closed on MSD as being 'not properly made'.

Parliamentary joint working cases

- 1.51 On rare occasions we receive cases that involve both a government department and local authority. If a Customer Service Officer identifies a properly made parliamentary case that may require joint working, then they should discuss this with the Investigation Manager of the joint working team. **(Policy requirement)**

Continuing Healthcare cases

- 1.52 These cases are usually handled by specific caseworkers in Assessment and Investigation. Therefore if the Customer Service Officer identifies that a complaint concerns continuing healthcare, then this should be recorded on MSD. **(Policy requirement)**

Prison complaints

- 1.53 When considering a case about a prison the Customer Service Officer should check whether it concerns the actions of the prison itself (such as the decision to transfer to a different prison) or the healthcare the prisoner has received. **(Policy requirement)**
- 1.54 Prison cases usually come under our parliamentary legislation and therefore we require an MP referral before we can consider them **(Legal requirement)**. These cases usually also involve the Prisons and Probation Ombudsman.
- 1.55 Complaints about healthcare at a prison are recorded against the organisation that provides the service. This will usually be an NHS organisation and the case will therefore be a health complaint. The theme 'offender/detainee healthcare' should be added to any complaint about prison healthcare. **(Policy requirement)**
- 1.56 When we receive a case from a prisoner we should make sure we record their prison number and include this on all correspondence. We should also include 'confidential access rights apply' at the top of the letter and on the front and back of the envelope in red pen. **(Policy requirement)**

Obtaining information

- 1.57 The Customer Service Officer should tell complainants that we may need to obtain (and share) information about their case. **(Policy requirement)** Complainants who complete a complaint form are also asked to provide consent for us to obtain relevant information/papers (including medical records, for health complaints).

Verifying caller identity

- 1.58 We should look to verify the identity of the complainant for every incoming and outgoing telephone call. **(Policy requirement)** To do this we should be asking at least three security questions to verify the person's identity, ideally different questions each time. **(Policy requirements)** These may include:

- The first line of the complainant's address.
- Their postcode.

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- The organisation they have complained about (the complainant may know the organisation by another name, such as the Jobcentre, JCP, DWP).
- The last three digits of a telephone number.
- When they last contacted us and how.

We should then check this against the details held on MSD before sharing any information about the case. If we have any concerns about the identity of the caller we should ask further security questions. After confirming the person's identity we must correct any out of date information on MSD.

(Policy requirements)

- 1.59 We can decide not to ask a complainant to verify their identity, but only in limited circumstances where it would be entirely unreasonable to ask them to do so. This could be when we have only just spoken to the complainant or are in very regular contact. In these instances we can use discretion in deciding whether to ask for this information again. **(Policy requirement)**
- 1.60 We must check that we have the authority of the complainant before releasing any information about a case to a third party. **(Policy requirement)** This includes professional advocates and MPs (for health complaints).
- 1.61 We should also be aware that we often have access to personal and sensitive information (such as a complainant's medical history) and should not share this with a third party unless the complainant is happy for us to do so. **(Policy requirement)** Please note that there is a specific policy for circumstances in which we need to release information if we think there is a risk to others.

Section 2. Can we look into your case?

Is the complaint about an organisation we can investigate?

2.1 If we receive a case that only concerns an organisation we do not have legal powers to investigate then it should be created on MSD as an enquiry rather than an assessment. The case can then be closed as ‘organisation out of jurisdiction’¹. **(Policy requirement)**

2.2 If we receive a case that relates to both an organisation we can investigate, and another we cannot, then the case should be recorded as an assessment instead. Only one organisation can be recorded on MSD and this must be one we can legally investigate. A note should be recorded in the task section of MSD to explain though that the complaint also concerns an organisation we are unable to investigate. **(Policy requirements)**

MSD Terminology

2.3 On MSD the decision whether the complaint concerns an organisation we can investigate is recorded under the ‘jurisdiction’ tab.

Is the complaint in remit?

2.4 If a complaint is about an organisation we can investigate but the complaint itself is out of remit then we still cannot investigate. The out of remit categories are listed below. An explanation of each is at Annex A.

- Actions abroad other than consular functions² (parliamentary cases only).
- Administrative action taken on judicial authority³ (parliamentary cases only).
- Alternative legal remedy achieved.⁴
- Commencement/conduct of civil/criminal proceedings⁵ (parliamentary cases only).
- Commercial/contractual matters⁶.
- Criminal investigation or national security⁷ (parliamentary cases only).
- Exercise of judicial/legislative functions⁸ (parliamentary cases only).
- Ineligible complainant.⁹
- Out of remit - other.

¹ Schedule 2, 1967 Act; sections 2, 2A and 2B, 1993 Act

² Sections 6(5), Schedule 3 Paragraph 2, 1967 Act

³ Schedule 3, Paragraphs 6A, 6B and 12, 1967 Act

⁴ Section 5(2), 1967 Act; section 4, 1993 Act

⁵ Schedule 3, Paragraph 6, 1967 Act

⁶ Schedule 3, Paragraph 9, 1967 Act; section 7(2), 1993 Act

⁷ Schedule 3 Paragraph 5, 1967 Act

⁸ Section 5(1), 1967 Act

⁹ Section 6, 1967 Act; section 9, 1993 Act

- Pre-1996 clinical matters¹⁰ (health cases only).
- Private healthcare (not NHS funded)¹¹ (health cases only)
- Public service personnel matters.¹²
- Three year rule¹³ (health cases only).

2.5 For more information or advice, please refer to the full text of the relevant law or to line management in the first instance. Enquiries can then be escalated to the Legal Team if necessary.

2.6 If an entire complaint falls within one (or more) of these reasons then the case should be declined for investigation. Where possible, complainants should be advised where their complaint can be sent (for example, to another Ombudsman or complaint handler).

MSD Terminology

2.7 On MSD the decision whether the complaint concerns a complaint within our remit is recorded under the 'remit' tab. The reason we are then deciding to decline the case is recorded under the 'failed remit reason' section of the tab.

The Victims' Code

2.8 The Victims' Code sets out in law the minimum level of service victims should expect to receive from organisations within the criminal justice system. Our role is to consider complaints made to us that an organisation has failed to meet their responsibilities under the Victims' Code¹⁴.

2.9 There are some organisations which only fall under our remit when a complaint concerns the Victims' Code. The Customer Service Officer should therefore ensure a complaint made about these organisations does not concern the Victim's Code before declining a complaint for investigation. **(Policy requirement)**

Is the complaint properly made?

2.10 If the complaint concerns an organisation in jurisdiction, the subject of which is also in remit, then the Customer Service Officer will need to decide if it has been properly made. If a complaint has not been properly made then it cannot be accepted for investigation¹⁵. **(Policy requirement)**

¹⁰ Health Service Commissioners Amendment Act 1996; Commencement Order SI 1996/970 Article 2

¹¹ Sections 2 and 3, 1993 Act

¹² Schedule 3, paragraph 10, 1967 Act; section 7(1), 1993 Act

¹³ Section 9(4A and B), 1993 Act

¹⁴ For more information about Victims' Code cases, see section 3 of the casework reference library.

¹⁵ Section 9 (2) 1993 Act and Section 5 (1A and B) 1967 Act

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- 2.11 On MSD you will only be prompted to record whether a health case is properly made if you select telephone as the method of delivery. If you select a written method of delivery, such as a complaint form, then MSD will automatically record the case as being properly made.
- 2.12 Once an MP has been added to a parliamentary case MSD will automatically record the case as being properly made. The Customer Service Officer should ensure though that evidence exists on the case to demonstrate the case is properly made, for example; the referral the MP sent us. **(Policy requirement)**
-

Health case requirements

- 2.13 In health cases a complaint must be made in writing to be properly made¹⁶ **(Legal requirement)**. We treat complaints made by email or via our online complaint form as being in writing.
- 2.14 If a complainant approaches us via social media, for example Twitter or Facebook then we should treat their complaint as being properly made. In these instances we should try to contact the complainant on the telephone to discuss their case further or ask them to complete our online complaint form. This should be recorded on MSD as an assessment with the delivery method of 'digitally assisted'. **(Policy requirement)**
- 2.15 If we decline a complaint as not being ready for us to consider, we should explain why the complaint is not ready and signpost the complainant to a suitable advocacy organisation that may be able to offer further support. **(Policy requirements)**.
- 2.16 If we think that a complainant may find it difficult to access an advocacy organisation, then we should consider completing a complaint form on their behalf. We should then send this to the complainant to confirm it is accurate. (We would then not treat the complaint as properly made until the form is returned with consent to proceed.) **(Policy requirement)**

Not properly made and premature

- 2.17 If it appears the complaints procedure has not been completed, the Customer Service Officer should direct the complainant to attempt or complete local resolution first. **(Policy requirement)**
- 2.18 The Customer Service Officer should advise the complainant that, following completion of local resolution, it is a requirement that the complaint is made in writing. If appropriate, the complainant should be provided with information about our time limits. The case should then be closed as 'Not properly made - not in writing'.

¹⁶ Section 9 (2) 1993 Act
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Not properly made and local resolution completed

2.19 If it appears that local complaints procedures have been completed then the complainant should be told that the complaint needs to be made in writing. The Customer Service Officer should then direct the complainant to our website or send a copy of our complaint form. **(Policy requirements)** If appropriate, the complainant should be provided with information about the time limit.

2.20 Complaints at this stage can then be closed as ‘Not properly made - not in writing’. If the complainant later returns with the same complaint in writing, then a new case will be created (with the reference connected to the previous one). **(Policy requirement)**

Parliamentary case requirements

2.21 In parliamentary cases a complaint must be made in writing to a MP and then referred to us by that MP¹⁷ **(Legal requirements)**. This must include the consent of the person aggrieved and a request from the MP that we investigate the complaint. **(Legal requirements)** The complainant has to make the complaint to the MP in writing but there is no requirement for the referral from the MP to us to be.

2.22 We do not need the complainant to provide written consent to the MP to pass the case to us. The Customer Service Officer should check that the complainant knows the MP has referred the complaint to us (for example, have they signed a complaint form). **(Policy requirement)** This is because without their consent the case cannot be properly made.

2.23 Referrals can be made by any MP. But, there is an unwritten convention between MPs that they will not interfere in another MP’s constituency business. This means, in practice, that complaints will normally be made to the complainant’s own constituency MP.

2.24 Where a complainant does not have an MP, for example, because they live abroad, they can contact the Chair of the Public Affairs and Constitutional Affairs Committee (PACAC), to refer the complaint on their behalf. You should direct them to contact the Chair via PACAC and **not** via the Chair’s constituency office as the referral is made in their role of Chair of PACAC, not as a constituency MP.

2.25 The contact details are:

Public Administration and Constitutional Affairs Committee
House of Commons
London

¹⁷ Section 5 (1a) 1967 Act
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SW1A 0AA
Telephone: 020 7219 3268
Email: pacac@parliament.uk

MP refuses to refer complaint

2.26 In circumstances where a complainant's own MP will not refer the complaint, you should **not** direct them to contact the Chair of PACAC (see above).

2.27 We are not able to require an MP to refer a complaint and nor should we act on a complainant's behalf to try and get an MP to make a referral. If a complainant wants to try and find another MP to support the referral, then we can provide them with contact details for the House of Commons. However, we should tell them that MPs will not normally act on behalf of another MP's constituent.

Not properly made and premature

2.28 If it appears the relevant complaints procedure has not been completed, the complainant should be directed to attempt or complete local resolution first. **(Policy requirement)** If appropriate, the complainant should be provided with information about the time limit.

2.29 The Customer Service Officer should advise the complainant that following completion of local resolution it is a requirement that the complaint is referred to us by an MP. **(Policy requirement)** The case should then be closed as 'No MP referral'.

Not properly made and local resolution completed

2.30 If it appears local complaints procedures have been completed then the complainant should be told that the complaint needs to be referred by a MP. **(Policy requirement)** If appropriate, the complainant should be provided with information about our time limits.

2.31 Complaints at this stage can then be closed as 'No MP referral'. If the complainant later returns with an MP referral, then a new case will be created (with the reference connected to the previous one).

Cases previously closed as properly made and premature

2.32 If a case is previously closed as premature and the complainant returns to us having completed local resolution, then we can still consider it as properly made on the merits of the previous MP referral. We do this in order to be customer-focused and to help complaints be considered as quickly as possible. The Customer Service Officer must ensure the complaint brought back to us still concerns the same organisation and complaint as previously raised. **(Policy requirement)**

Complaints made by telephone

2.33 All complaints received over the telephone will usually be closed as ‘not properly made’. This will be because there is ‘no MP referral’ (Parliamentary) recorded or because the complaint is ‘not in writing’ (Health). The Customer Service Officer should still try to establish if the case is ready for us, so that appropriate advice can be given. **(Policy requirement)**

Recording requests for call backs via SMS

2.34 If a complainant contacts us by SMS to request a call back, and the Customer Service Officer is able to speak with them, then the case should be recorded as an assessment with telephone as the channel of delivery. **(Policy requirement)**

2.35 If the Customer Service Officer is unable to get through to the complainant then the case should be recorded as an enquiry with SMS selected as the channel of delivery. The enquiry type should be recorded on MSD as a potential complaint. **(Policy requirement)**

Is the complaint ready for us?

2.36 If we consider a case is in remit and has been properly made then we next look at whether the complaint has been through the local complaints process. In some cases, a health organisation may ask to self-refer a complaint directly to us. If we receive these cases they should be referred directly to the Corporate Casework Team. See Annex B for further details about this process.

MSD terminology

2.37 On MSD the test whether a complaint is ready for us is called the ‘complaints process check’.

2.38 In health cases, the law¹⁸ prevents us from conducting an investigation unless we are satisfied the complaints process has been used and exhausted, or it was not reasonable to expect the complainant to have done so. **(Legal requirement)**. There is no legal requirement for parliamentary complaints to have been looked at by the organisation complained about.

2.39 A complainant bringing a complaint to us should usually have given the organisation responsible an opportunity to formally respond and resolve their complaint before we would consider it. **(Policy requirement)**

2.40 If a complainant has not yet started the local complaints process then we will normally decline to investigate the complaint as premature for our consideration.

¹⁸ Section 4(4) and (5) 1993 Act
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- 2.41 When an organisation complained about is prepared to consider a complaint further, or there are additional stages in the complaints process to complete, we will usually close a complaint as 'Premature: local resolution ongoing'.

Recording a premature complaint on MSD

- 2.42 On MSD a premature decision should be recorded under the complaints process check tab, by not clicking the 'completed complaint' box. If a complaint has been made to the organisation, then the 'complained' box should be clicked to confirm this. **(Policy requirement)**
- 2.43 Complainants whose cases we close as premature should be told about our time limit and that we can put it to one side if we consider it is reasonable to do so. **(Policy requirement)**
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Exceptional circumstances where we may consider a premature complaint

- 2.44 There are some exceptional circumstances where we may decide to consider a premature complaint. For example, if the complainant is suffering particular difficulties, has a terminal illness or where it is clear that the relationship between the complainant and the organisation has broken down completely.
- 2.45 If the organisation has provided a Duty of Candour response but no local resolution response, then we should consider whether there is any merit in looking further at the complaint even without a local resolution letter. Please look at the [Service Model General Guidance](#) Section 6 for further details.
- 2.46 If we decide not to require a complainant to have completed previous procedures, the Customer Service Officer should record this in the 'exception' tab on MSD and explain why we should consider the case now. **(Policy requirement)**

Complaints considered by other organisations

Second tier complaint handlers

- 2.47 In some cases a second tier complaint handler has been involved in replying to a complaint as an additional stage of their complaints process. Where this is the case we would usually expect a complainant to have completed this stage before we consider investigating. **(Policy requirement)**
- 2.48 Where complaints have not completed that second tier, they would normally be declined as 'failed complaints process' (if properly made). A second tier complaint handler can be an entirely separate organisation within our jurisdiction or a separate part of an organisation in our jurisdiction that acts as a complaint handler (such as the Independent Case Examiner).

2.49 A Customer Service Officer considering this type of complaint should record it as being about the original organisation unless the complainant has specifically said they only want to complain about the second tier. **(Policy requirement)**
The case can then be closed or passed for assessment.

2.50 We can, in exceptional circumstances, decide to consider a complaint further if the second tier has not been completed. For example, if the complainant is suffering particular difficulties, has a terminal illness or where it is clear that the relationship between the complainant and the organisation has broken down completely.

2.51 In these cases the Customer Service Officer should clearly record why we are deciding to take this action and this should be recorded in the exception tab on MSD. **(Policy requirement)**

Second tier complaints at assessment stage

2.52 If a complaint is passed to an Assessor, then, during their initial contact with the complainant, they should confirm whether they are asking for us to investigate the actions of both the organisation and second tier. The Assessor should allow the complainant to lead this conversation and should only record the complaint as put to us. **(Policy requirement)**

2.53 The Assessor should add complaint parts to the case to reflect the complaint made and the organisations complained about. The actions of any contractor acting on behalf of the organisation should also be recorded as a separate complaint part. **(Policy requirements)** Further information about recording complaint parts can be located in paragraph 2.96.

2.54 If the complaint concerns both the original organisation and the second tier, then the Assessor should ensure complaint parts are recorded separately for both, even if the areas of complaint are the same. **(Policy requirement)**

2.55 If the complainant only wants us to consider the actions of the original organisation then the Assessor should still confirm why the complainant remains unhappy with the second tier's response. **(Policy requirement)**

2.56 On some occasions the complainant may say they only want to complain about the original organisation, but the complaint described also concerns the second tier's actions. In these instances the Assessor should ensure they explain this to the complainant so they can make an informed choice concerning what they would like us to investigate. **(Policy requirement)**
Examples of this type of issue include that:

- The remedy suggested by the second tier was unreasonable or did not go far enough to resolve the complaint.

- The second tier reached a conclusion based on inaccurate facts or misleading information.
- The service provided by the second tier was unreasonable or there was an unnecessary delay.

(It is still for the complainant to decide if they want us to only investigate the original organisation.)

2.57 If the complainant decides they only want us to consider the original organisation or second tier, then our assessment should be limited to that organisation and all records should reflect this approach. **(Policy requirement)**

2.58 The Assessor can request any information they need during their assessment from both the organisation and second tier. If we decide to accept the case in principle for investigation then the Assessor should give both the organisation and second tier the opportunity to comment. **(Policy requirement)**

Second tier complaints where both the organisation and second tier have been complained about

2.59 If a case concerns both the organisation and second tier then we can record different decisions about both. **(Policy requirement)** For example, in a case where the Assessor sees potential failings in an organisation's actions, but none in the second tier's, then different decisions should be recorded to reflect this.

Second tier complaints where only the organisation is complained about

2.60 Where a case only concerns an original organisation the Assessor can still consider the second tier response as part of their assessment if appropriate. The Assessor should still only record a case and decision against the organisation and this approach should be reflected in all communication had on the case. This means if the Assessor sees potential failings in an organisation's actions, but that the second tier's response resolved the complaint; then the decision should still be recorded in relation to the organisation. **(Policy requirement)**

Second tier complaints where only the second tier is complained about

2.61 On rare occasions we may receive a complaint that only concerns the actions of the second tier. These will usually concern the service received or a delay, rather than the decision. In these cases the Assessor should check these specific issues have been raised with the second tier and consider whether the response provided was reasonable. **(Policy requirement)**

2.62 The Assessor should only record the case and decision about the second tier and this approach should be reflected in all communication on the case. **(Policy requirement)**

Passing a second tier complaint for investigation

2.63 If the Assessor decides a complaint should be passed for investigation then the complaint summary should only concern the organisation(s) we have assessed. The 'proposal to investigate' letters should be sent to the organisation(s) complained about, any other services acting on their behalf and the second tier. **(Policy requirement)**

Complaint handlers in health cases

2.64 Under Section 7 of the NHS Complaints Regulations¹⁹ a complainant has the option of approaching either the provider or the commissioner with their complaint. In these cases the complaints process only needs to be completed with one of the organisations. **(Legal requirement)**

2.65 A Customer Service Officer considering this type of complaint should record it about the provider unless the complainant has specifically said the case concerns the commissioner only **(Policy requirement)**. The case can then be closed or passed for assessment.

Cases passed onto assessment

2.66 If a complaint is passed to an Assessor, then during their initial contact with the complainant they should confirm whether they are asking for us to investigate the actions of both the organisation and commissioner. The Assessor should allow the complainant to lead this conversation and should only record the complaint as put to them. **(Policy requirement)**

2.67 If the complaint concerns both organisations, then when recording complaint parts on the case the Assessor should ensure complaint parts are recorded about both the organisation and the commissioner, even if the areas of complaint are the same. Further information about recording complaint parts can be located in paragraph 2.96.

2.68 If the complainant only wants us to consider the actions of the original organisation then the Assessor should still confirm why the complainant remains unhappy with the commissioner's response and whether there is a specific complaint about the commissioning of the service, such as how it was funded. **(Policy requirement)**

2.69 If the complainant decides they want us to consider only the original organisation or commissioner, then our assessment should be limited to that organisation and all records should reflect this approach. **(Policy requirement)**

¹⁹ The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009

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2.70 The Assessor can still request any information required during our assessment from both the organisation and commissioner and should give both the option to comment if we accept the case in principle for investigation. **(Policy requirement)**

Complaints where both the organisation and commissioner are being complained about

2.71 If a case concerns both the organisation and commissioner then we should make separate decisions about both. **(Policy requirement)** For example, in a case where the Assessor sees potential failings in an organisation's actions, but none in the commissioner's, then different decisions should be recorded.

Complaints where only the organisation is complained about and not the commissioner

2.72 Where a case only concerns an original organisation the Assessor should still consider the response provided by the commissioner as part of their assessment. **(Policy requirement)** We may be able to reach a decision on whether to accept the complaint for investigation largely based upon the response from the commissioner, if we decide the actions of the second tier in resolving the complaint were reasonable.

2.73 The Assessor should only record a case and decision about the organisation and this approach should be reflected in all communication on the case. This means if the Assessor sees potential failings in an organisation's actions, but none in the commissioner's response then the decision should still be recorded in relation to the organisation's actions. **(Policy requirement)**

Complaints where only the commissioner is complained about

2.74 We may receive a complaint that only concerns the actions of the commissioner. For example, these may only concern a decision whether to fund treatment or to use a specific organisation to provide services. In these cases the Assessor should check these specific issues have been raised and addressed and decide whether the response provided was reasonable. **(Policy requirement)**

2.75 The Assessor should only record the case and decision about the commissioner and this approach should be reflected in all communication on the case. **(Policy requirement)**

Continuing Healthcare

Cases where a review has not been completed

2.76 When a Clinical Commissioning Group (CCG) is considering a person's eligibility for funding, a checklist will be completed to see whether the person needs a full assessment. If a completed checklist indicates that a full

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assessment is needed, this will be completed using a Decision Support Tool. If we receive a complaint about a decision where a person has been found not to be eligible at the checklist stage, we should check that the CCG has reviewed this decision.

2.77 If we receive a complaint about a decision where a person has been found not to be eligible after a full assessment, we should check whether there has been a review by the CCG and NHS England. If there has not been a review by NHS England we should signpost the person making the complaint to NHS England's review process. **(Policy requirements)**

2.78 In this type of complaint we should record the relevant CCG as the organisation to assess. **(Policy requirement)**

Cases where a review has been completed

2.79 NHS England is legally responsible for carrying out independent reviews of CCGs' decisions on whether people should receive funding. NHS England's reviews are to make sure that the decisions made by CCGs were correct. NHS England's review is a separate legal responsibility and is not carried out on behalf of CCGs. Consequently, NHS England's reviews are a function of NHS England and not second-tier complaint handling on behalf of CCGs.

2.80 If we receive a complaint when there has already been a review by NHS England, we should check with the person making the complaint why they are unhappy with NHS England's review. In most cases, if we have a complaint about NHS England's review, we should send a letter to the person who made the complaint explaining that we will only be investigating NHS England's review and that we will not be investigating the CCG as its actions have already been considered by NHS England.

2.81 In this type of complaint we should record the relevant NHS commissioning region as the organisation to assess. **(Policy requirement)**

2.82 There will be some cases where it might be appropriate to investigate before there has been a review by NHS England and some cases where we might need to investigate both the CCG and NHS England. These cases should be discussed with a manager.

2.83 The Assessor should ensure in these instances that there are written complaints about both the CCG and NHS England on file and that both the CCG and NHS commissioning region have been added as organisations complained about (either as the organisation on the case or as a complaint part). **(Policy requirements)**

Individual Funding Requests

- 2.84 An Individual Funding Request (IFR) is an application to fund healthcare which falls outside the range of services and treatments which are routinely commissioned. Only a doctor can apply for an IFR on behalf of a patient.
- 2.85 The NHS Directions allow CCGs to make decisions about which services will and will not be funded on the NHS. Each CCG has its own policies for certain treatments and an IFR policy. Where a commissioning policy already exists, CCGs will consider whether there are sufficient grounds to agree funding. Where no commissioning policy exists, CCGs will consider whether individual funding can be supported.
- 2.86 If a complaint is received about a decision where funding has been declined, the Assessor should check that the application submitted to the CCG includes the information outlined by the patient. They should also check which policy has been used and confirm whether the CCG's decision is in accordance with its policies and the NHS Directions. They should also consider if the policy itself appears reasonable. **(Policy requirements)**

Joint working cases

- 2.87 If an Assessor establishes that a case they are considering concerns joint working, then this must be discussed with the Investigation Manager of the joint working team. **(Policy requirement)**
- 2.88 If the Investigation Manager decides the case concerns joint working then the joint working team should take over consideration of the case. Consent must be requested from the complainant and the [Joint Working Case Transfer Form](#) completed. **(Policy requirements)**. The casefile should then be passed to the joint working team's Business Support Officer.

Beginning an assessment

- 2.89 If we determine the case is one we can look at and is ready for us to consider, it will be allocated and assigned to the Assessor by a Business Support Officer. **(Policy requirement)**
- 2.90 If the case concerns more than one complainant, the Assessor should ensure the additional complainant's details are recorded in the task section of the MSD record. The Case Assessment form should then reflect the complaint, injustice and outcome for both complainants'. **(Policy requirements)**.
- 2.91 If it is obvious that the complaint relates to the Duty of Candour this should be flagged on MSD. Please see the [Service Model General Guidance](#) Section 6 for more detail.

Contacting the complainant

2.92 The Assessor should make contact with the complainant as soon as possible and before reaching any decision on their case. During this contact the Assessor should clarify that the purposes of undertaking an assessment is to decide whether to send a case for investigation. **(Policy requirements)**

2.93 The default position is that our initial contact should be by telephone. If a complainant tells us they have a preferred method of communication during initial contact, then we should use that method instead from then on. **(Policy requirements)**

2.94 During contact with the complainant the Assessor should cover the areas listed below and record any information gathered on MSD.

- Introduce self and role
- Explain an assessment is for the purposes of deciding whether to propose to accept a case for investigation.
- If a reasonable adjustment has been requested agree and record a suitable method of contact (further information available at paragraph 1.29)
- Establish any other information required to complete the assessment (for example; reasons for a delay in bringing a complaint to us)
- Discuss the statement of the complaint and ensure an injustice and outcome have been recorded. Outcome is particularly important if the case relates to the Duty of Candour as we may not be able to achieve certain outcomes sought.
- Manage the complainant's expectations if we are already aware the case is one we are unlikely to investigate or the outcome one we are unlikely to achieve.
- Explain our timescales and when the complainant will likely next hear from us.
- Provide contact details should the complainant need to speak to us again.

2.95 This can take place over more than one contact if appropriate, for example; if new information comes to light later in the case.

2.96 A reasonable number of attempts should be made to contact the complainant before taking further action on the case. If it is not possible to contact the complainant, then a record should be created for each unsuccessful contact attempt.

2.97 If the Assessor is unable to contact the complainant, despite multiple attempts, they should consider if enough information and evidence is available to still make a decision.

- 2.98 If the Assessor considers they have enough information and evidence to make a decision on a case, then they should record this on MSD. This decision should be communicated to the complainant and the case should then be declined or passed for investigation as appropriate. **(Policy requirements)**
- 2.99 If the Assessor considers they require further information or evidence before making a decision on a case, then they should record this on MSD. This decision should be communicated to the complainant and the case should then be closed as 'withdrawn'. **(Policy requirements)**
- 2.100 If a complainant makes contact with us after we have closed a case as withdrawn the Assessor who previously dealt with it should arrange for a new case to be created on MSD.

Reaching and evidencing our decision

- 2.101 Before reaching a decision on the case, we should ensure as much as possible, that we have obtained all of the information we need, including from the complainant, organisation/s and anyone else we identify as being able to provide relevant evidence.
- 2.102 By ensuring we have gathered all the relevant evidence, thoroughly considered that evidence and followed the proper casework processes we can clearly demonstrate that we have reached a robust, impartial decision.
- 2.103 If we decide not to investigate a case and there is an alternative route available to the complainant, then the Assessor should inform them of it. This may include signposting back to the organisation or suggesting a suitable advocacy agency. If a case is out of remit then the Assessor should try to identify another organisation, if possible, that can help and then direct the complainant to it. **(Policy requirements)**
- 2.104 If we decide not to investigate the case, but have already contacted the organisation complained about during our assessment, we must tell them our decision. **(Policy requirement)**

Recording decisions on MSD

- 2.105 A complaint part is a way of recording an area of complaint raised with us (for example nursing care) or named person on MSD. We use complaint parts to record decisions on cases at assessment and investigation stage, and they should be added to represent the main areas of complaint raised with us.
- 2.106 The Assessor should add complaint parts to the case to represent the main areas of the complaint, for example; nursing care or complaint handling. If further organisations need to be added to the case at this point, then complaint parts should also be added to reflect this. At least one complaint part should be added for each organisation. Named persons should also be

recorded as complaint parts. **(Policy requirements)** For further information about complaint parts please see the Casework Categories and themes guidance in section 5 of the [Service Model General Guidance](#).

- 2.107 If we decide not to investigate a complaint for any reason, the Assessor must ensure there is a clear audit trail on the MSD record explaining why and documenting the material evidence they have used to reach this decision. A decision should be recorded separately against each individual complaint part added to the case. **(Policy requirements)**

Recording information on MSD

- 2.108 Information should be recorded and stored in the appropriate section of the MSD record or in the documents tab and the agreed naming conventions in Annex I should be used.
-

Is the complainant suitable?

- 2.109 The law²⁰ says that the aggrieved must make a complaint themselves unless there is any reason they are unable to do so. If the aggrieved is deceased or otherwise incapable of bringing the complaint themselves, then the law allows them to have someone bring the complaint to us on their behalf. **(Legal requirements)**.
- 2.110 If for any reason the person bringing the complaint to us is not the aggrieved then the Assessor must consider if they are suitable to bring a complaint to us. **(Policy requirement)**
- 2.111 We must be careful when deciding whether a person is suitable to complain on behalf of someone else. This is because if we accept an inappropriate person as a complainant we might release private and personal information they should not have access to. The Assessor should therefore consider the type of information that person might see, as part of their decision about whether a person complaining to us is suitable to do so. **(Policy requirement)**
- 2.112 We will usually only consider a person to be suitable to bring a complaint to us if the aggrieved is deceased, lacks mental capacity or is considered too young to understand that they can raise a complaint.

Does the aggrieved have capacity?

- 2.113 If a complaint is received that is made on behalf of someone said to be unable to complain, the Assessor must start with the assumption that the person is capable of bringing the complaint to us. **(Policy requirement)**

²⁰ Section 6 (2) 1967 Act; Section 9 (3) 1993 Act
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2.114 When evidence is not available to show the aggrieved lacks capacity the Assessor should make checks to establish if this is the case. **(Policy requirement)** This could be by contacting them directly or someone else who may be able to tell us if the aggrieved is capable of bringing the complaint. In some circumstances it may also be appropriate to request medical records and/or seek clinical advice.

2.115 Sometimes information has already been submitted that shows that the aggrieved does not have capacity. In these cases the Assessor does not need to request further information. **(Policy requirement)**

Complaints made on behalf of children

2.116 When a parent or guardian brings a case to us on behalf of a child, the Assessor should consider whether the child is capable of bringing it themselves. **(Policy requirement)** There is no set age where a child becomes suitable to complain to us and the Assessor should ensure they take into account the child's age and maturity.

Is the complainant suitable to bring us the case?

2.117 If the Assessor is satisfied that the aggrieved cannot complain for themselves, they still must check whether the person bringing the case to us is suitable to do so on their behalf. **(Policy requirement)** Considerations include:

- Whether there is a conflict of interest?
- If there is evidence to suggest that the affected person wouldn't want the person complaining on their behalf to have access to their confidential information?
- Is there any suggestion that the person complaining is not acting in the affected person's best interest?

2.118 If we decide the aggrieved is not capable of complaining to us, and the person bringing the complaint is suitable, then the Assessor should record the person bringing the complaint to us as a representative on MSD. **(Policy requirement)**

MSD terminology

2.119 Representatives are recorded differently on MSD, dependent on whether they are individuals or an organisation; for example, a family member would be recorded differently to an advocate. An individual will be recorded as representative (person) and an organisation as representative (organisation).

2.120 If we decide the aggrieved is capable, or the person bringing the complaint is not suitable then case will be closed as 'Not suitable complainant'.

Representatives acting on behalf of adults with capacity

- 2.121 The aggrieved can choose someone to represent them for the purposes of bringing a complaint to us (for example a friend). In these cases the aggrieved should be recorded as the aggrieved and the person acting for them as a representative. **(Policy requirement)**
- 2.122 If the representative works for an organisation (for example as an advocate or lawyer) they should be recorded on MSD as a representative (organisation). **(Policy requirement)**
- 2.123 If a complaint is received where a representative is acting on behalf of someone who has capacity, then the Assessor will need to obtain the consent of the aggrieved, which can be taken over the telephone. The Assessor should also consider if the representative is suitable to represent the complainant under the same considerations as stated above. **(Policy requirement)**
- 2.124 If we decide the aggrieved is capable, or the representative is not suitable then the complaint will be closed as 'Not suitable representative'.

Is the complaint within time?

- 2.125 We must consider the time limit in every case before making a decision to investigate a complaint.
- 2.126 For health complaints, the aggrieved must refer the complaint to us within one year from the day they first became aware that they had a reason to complain²¹ **(Legal requirement)**.
- 2.127 For Parliamentary complaints, the aggrieved must refer the matter to an MP within 12 months from the day they first became aware that they had a reason to complain²² **(Legal requirement)**.
- 2.128 If a complaint comes to us outside of the 12 month time limit, we must consider whether to put the time limit to one side. **(Policy requirement)**. The following points may be relevant:
- Complainant's reasons for delay (could include ill health of the person complaining or close family or not being aware of the Ombudsman, especially if not told by the organisation complained about).

We would be more likely to set aside the time limit if the complainant or a close family member had been ill or they had been incapable of making the complaint until now. The fact that a complainant was not aware of us may be a good reason to set aside the time limit (particularly if they were not signposted to us by the organisation), though the complainant should take some

²¹ Section 9(4) 1993 Act

²² Section 6(3), 1967 Act

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responsibility for trying to find out about the next stage of the complaints process. If there has been any unjustifiable delay by the complainant, we would be less likely to set aside the time limit.

The Assessor should have either spoken to the complainant or attempted to do so before making a decision on whether to set aside the time limit. This includes cases where the complainant has given a clear and detailed explanation in correspondence explaining the reasons for the delay.

If the complainant cannot be reached, we should try to call them three times over two days. If a telephone number has not been provided, we should write to (or email) the complainant to explain what our time limit means and set out our understanding of why the complaint is out of time based on what they have said in their initial complaint details. We should ask the complainant to provide further details before we reach a decision. We should give the complainant a week to respond.

There may be cases where we will already know that we will not be taking the case on for an investigation regardless of the information the complainant may provide. In those cases, the Assessor should discuss the case with their manager who can then agree that there is no need to write to the complainant and ask for further information and a decision can be taken on the complaint.

- Time taken for organisation to respond to complaint.

A complaint may come to us outside of the time limit because the complainant was waiting for local resolution to be completed. If an organisation has taken a long time to consider a complaint (whether through delay or because the issue was complex) that then comes to us out of time, we are more likely to consider putting the time-limit to one side. If the complainant has been responsible for delays in the complaint process (for example, not putting their initial complaint to the organisation promptly or delaying bring the complaint to us after local resolution was completed) then we would need to consider whether those delays were justified (see ‘complainant’s reasons for delay’ above).

Please remember that the time limit is counted from the day the person became aware of the matters complained about. In most cases, this will **not** be the date that local resolution concluded.

- Scale of injustice - if the case raises clinical issues you may need clinical advice to help you reach a decision.

If a complaint has a serious claimed injustice then this may make us more likely to put the time-limit to one side. However, each case still needs to be considered on its own merits.

For example, we are more likely to investigate cases of claimed avoidable death but we would still look for indications of serious service failure and consider other relevant factors before deciding to investigate.

To make this judgement we need to take an initial view on whether there appears to be a link between the claimed injustice and the alleged maladministration or service failure. This is not about proving a link, but taking a provisional view on some questions that we would normally consider at a later stage in the assessment, so that we can decide whether we should set aside the time limit in order to consider the case further.²³ In some cases we may need to obtain some initial clinical or legal advice before we can reach a decision.

Some of the things to think about when we are trying to establish the severity of the injustice are:

- The type of injustice - For example, bereavement arising from an avoidable death will always be more serious than inconvenience.
- The duration of the injustice - some injustices may be remedied once the complaint is resolved, but others may be ongoing.
- The impact on the aggrieved - to what extent has the aggrieved's ability to live a normal life been affected.
- Whether it has been possible, in part or in whole, to return the aggrieved to the position that they were in before the failure occurred.
- Is the complainant alleging a significant actual financial loss - loss of earnings would be more serious than the loss of a £30 court fee.

(This is not a definitive list of considerations. The scale of injustice is subjective and we should consider the circumstances of each case individually.)

- Wider public interest.

We are more likely to investigate a complaint that relates to an issue of public interest or to a matter of current concern to us, or if we have identified a wider problem or theme.

- Is an investigation practical?

We may consider it impractical to investigate very distant events, especially when there is a lack of contemporary evidence.

There may be serious cases which we would want to investigate, regardless of how long it took the complaint to be referred to us (for example, a serious injustice). However, we still need to consider whether there is likely to be the

²³ Our view on maladministration, injustice etc. may of course change later as the case moves on.
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information/evidence available to allow us to do so and how we might obtain that information.

Should all the above factors be considered?

2.129 This will depend on the case. For some cases it may be necessary to consider all the above factors when reaching a decision. In others, we may only need to consider one or two factors. These considerations should be made according to the circumstances of the case.

How to deal with previously premature cases

2.130 If we close a case as premature, we have decided that the complaint put to us at that time is not one that we should investigate. The complainant should be told about the time limit when the case is closed (so that they know to bring the complaint back to us as quickly as possible if they need to do so). If a person does complain to us again about the same matters, (for example, if they remain unhappy once local resolution is complete), that is a new complaint. We must consider how the time limit applies to the new complaint, from the date that the complainant became aware of what they are complaining about. We will take into account whether the complainant was informed about our time limits when we explained that their complaint was premature - if we didn't warn them it is more likely that we will put the time limit to one side.

Part in time and part out of time

2.131 In some cases different parts of the complaint may be both in and out of time. For example, the substance of a complaint could be out of time, but specific concerns about complaint handling could be in time. In these cases, we need to take a view on whether they are separate complaints for the purposes of the time limit and if so make separate decisions about the application of the time limit. These separate decisions can then be recorded against the relevant complaint parts.

Documenting our decision

2.132 If a complaint is out of time, regardless of whether we decide to set aside the time limit or not, we should always ensure that there is a clear record to explain why we have reached our decision. It is not enough, for example, to say that there was no reason to set aside the time limit or to say that the time limit did not apply; we must be clear about our reasons for deciding why we did or did not decide to put the time limit to one side. We should provide enough detail and have a clear enough audit trail so that anyone else who is looking at the case can quickly and easily see the reasons for the decision.

2.133 If we decide not to set the time limit to one side on any part of the complaint, then this should be recorded on MSD under the relevant complaint part. **(Policy requirement)**

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2.134 If we are closing the other parts of the complaint for a different reason, or passing part of the case for investigation then the other complaint parts added to the case should record this decision instead. **(Policy requirement)**

Does the complainant have an alternative legal remedy?

2.135 The law²⁴ says we cannot investigate if there is or was a legal remedy that the aggrieved should pursue or should have pursued, unless it is (or was) not reasonable for them to do so. **(Legal requirement)** These legal remedies include established methods of challenging a decision (for example a right of appeal to a benefit tribunal) or an option of Judicial Review.

2.136 The Assessor should fully explore with the complainant the remedy they are seeking from an investigation and a clear audit trail of this should be recorded on MSD. If at any point the complainant tells us they now want a different remedy (such as asking for financial redress) then the Assessor must review their consideration of legal remedy to reflect this and record that they have done so. **(Policy requirement)**

2.137 If the complaint relates to the Duty of Candour and the complainant is solely seeking regulatory action or a legal decision that the Duty of Candour was breached, then the complaint might be more appropriate for the courts. See the [Service Model General Guidance](#) Section 6 for more details.

2.138 We do not have the remit to consider complaints where the aggrieved has already resorted to a court or tribunal that did (or could have but didn't) provide the full remedy sought. **(Policy requirement)** Cases where this has occurred should be closed as 'out of remit - alternative legal remedy achieved'. **(Policy requirement)**

2.139 If a complainant has already resorted to legal action but not all of the outcomes sought could have been provided by a court or tribunal, we could still consider this complaint. In these instances the outcomes we could achieve would be limited to those not available through legal action.

2.140 If the aggrieved has not had a full legal remedy or has not pursued legal action the Assessor should consider **(Policy requirement)**:

- Is or was there an alternative legal remedy?
- If so, is it/was it reasonable for the aggrieved to use it?

²⁴ Section 5(2), 1967 Act; Section 4, 1993 Act
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2.141 In reaching this decision, points to consider include (but are not limited to):

- The amount of financial remedy being sought and whether pursuing legal action would cost more than, or take up a disproportionate amount of, this remedy.
- Whether legal action would achieve all of the outcomes the aggrieved is looking for. Our general position is that if the court could not remedy all the outcomes sought (such as service improvements) but we could, the complaint will be for us.
- The age and particular circumstances of the complainant.
- How difficult it would be to make the claim.
- If we can clearly see a potential claim in negligence then we should consider bringing that to the attention of the complainant, regardless of what they have said they want to achieve.
- The time that would be needed to pursue legal action.
- The ability of the complainant to obtain the relevant funding for making the claim.
- Whether the legal route was the only way that the complainant could obtain (or could have obtained) the outcome they are seeking. For example, the overturning of a planning decision.

2.142 If we decide not to consider part of the complaint as reasonable to pursue an alternative legal remedy, then this should be recorded on MSD under the relevant complaint part. **(Policy requirement)**

2.143 If we are closing the other parts of the complaint for a different reason, or passing part of the case for investigation then the other complaint parts added to the case should record this decision instead. **(Policy requirement)**

2.144 Where we decide not to investigate the entire complaint for this reason, the appropriate overall closure code is 'reasonable to pursue an alternative legal remedy'.

Risk assessment

2.145 Case risk should be assessed at the point at which a decision is being made not to investigate. **(Policy requirement)** Please refer to risk section of the [Service Model General Guidance](#). Please remember that risk assessment should include consideration of any conflicts of interest (both of the casework staff and of senior staff).

Section 3. Should we look into your case?

Is there another dispute resolution forum?

3.1 Some complaints can be looked at by both us and another complaint handler. We would usually consider though, that only one investigation should take place. The Assessor should consider which organisation is more appropriately placed to consider the complaint and achieve the remedy sought. **(Policy requirements)**

3.2 If the Assessor is unsure about whether the case is more suitable for the other complaint handler then they should discuss the case with them first. **(Policy requirement)**

3.3 If we decide that it is reasonable for a complainant to raise their case with another organisation then this should be recorded on MSD under the relevant complaint part. If we are closing the rest of the case for a different reason, or passing part of the case for investigation then the relevant complaint part should record that decision instead. **(Policy requirement)**

3.4 If we decide not to investigate any part of the complaint for this reason then the overall closure code for the case should be 'other dispute resolution forum appropriate'. **(Policy requirement)**

Any other reason not to investigate?

3.5 Before deciding to pass a case for investigation an Assessor must consider the following:

- Are there any indications of maladministration or service failure?
- Are there any indications of injustice flowing from the maladministration or service failure?²⁵
- If so, is the injustice still unremedied?

3.6 If the Assessor can answer yes to all of these questions then there is a presumption that the case will be passed for investigation, unless there is a good reason not to. The Assessor must consider if there is any other good reason not to investigate. **(Policy requirements)**

3.7 If we decide not to investigate a complaint, then the Assessor must ensure there is a clear audit trail explaining why. **(Policy requirement)** A case will usually be closed using the following closure details:

- 'No indications of maladministration.'

²⁵ The 1993 Act also uses the term 'hardship' as well as injustice. We use 'injustice' throughout this guidance because that is the term common to the 1993 Act and 1967 Act. In addition, any claim of hardship can be seen as an injustice to the aggrieved.

- ‘No evidence of unremedied injustice.’
- ‘Other reason to decline.’

Are there any indications of maladministration or service failure?

- 3.8 There is no specific definition of maladministration or service failure. Our normal approach is to identify (using relevant standards) what should have happened, what did happen and then whether any gap between the two was maladministration or service failure. At this stage of the process the Assessor only needs to be looking to see whether there are any indications of maladministration or service failure, and this does not need to be fully evidenced in order for a case to be passed for investigation.
- 3.9 The Assessor should look at whether the organisation has already admitted to any failings in the service they provided. They should also consider any relevant standards or guidelines which will help them to reach a view on whether the actions of the organisation were reasonable. **(Policy requirements)** This may include getting advice from a clinician or member of the Legal Team if proportionate to do so. These considerations should then be clearly recorded on the case assessment form. **(Policy requirement)**
- 3.10 On occasion the Assessor may not be able to reach a view on whether something has gone wrong without seeking substantial amounts of advice or by taking a disproportionate amount of time. This may also include cases where a large amount of papers are required or which concern complex issues. The Assessor can decide to propose to investigate a complaint on the basis, that due to the size and complexity of issues, the case would best be resolved through investigation. They should ensure a clear audit trail exists to demonstrate how they reached this decision. **(Policy requirements)**

Are there any indications of injustice flowing from the maladministration or service failure?

- 3.11 When the Assessor sees indications of maladministration or service failure, they need to consider if they may have led to an unremedied injustice to the complainant. When making this decision the Assessor only needs to be looking for indications of whether there **could** be an unremedied injustice, and this does not need to be fully evidenced for a case to be passed for investigation.
- 3.12 The Assessor must consider whether the injustice claimed is likely to have happened as a result of the claimed failings.

Is the injustice still unremedied?

- 3.13 The Assessor must also look at what action the organisation has already taken to put things right and whether this appears to have resolved the case. They can seek advice (usually from a clinician or the Legal Team) to establish this, if it is proportionate to do so. These considerations should then be clearly

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recorded on the case assessment form. It is for us to decide whether an organisation's actions have resolved a complaint. The Assessor should therefore take into consideration the outcome the complainant is seeking from an investigation, but not be led by it in making a decision. A case where the injustice has been fully resolved may not be suitable for investigation.

- 3.14 In some instances the Assessor will be unable to reach a view without substantial amounts of advice or by taking a disproportionate amount of time. This may also include cases where a large amount of papers are required or where a case concerns complex issues. They can decide to propose to investigate a complaint on the basis due to the size and complexity of issues the case would best be resolved through investigation. They should ensure a clear audit trail exists to demonstrate how they reached this decision.

Reasons we may still decide not to investigate

- 3.15 There will be occasions when we decide that there are other reasons why we should not investigate a complaint made to us. These include:

- If the outcome sought is not reasonable in relation to the claimed injustice.
- If the outcome sought is not achievable.
- That an investigation would not be practical, would not reach a satisfactory conclusion and there would be no value in providing that response through an investigation.
- That the complainant is unhappy with the investigation we are proposing to undertake and we cannot reach agreement on how to proceed.
- That the nature/theme of the complaint is one that may not be appropriate for us to investigate.
- That another organisation is considering the same issues (such as the Coroners' Court or General Medical Council) and it seems appropriate for us to wait for the outcome of their work first.
- That after a closer look at the case we establish it is out of remit or not yet ready for us to consider.

- 3.16 If the Assessor considers we should not propose to investigate a complaint for one of these reasons, then this should be clearly audited on MSD and will usually be closed as 'other reason to decline'. **(Policy requirement)**

Clinical advice

- 3.17 Clinical advice should be sought when we need the knowledge or expertise of a clinician in order to make a decision on a case. This will usually only be when an Assessor cannot be expected to have the relevant knowledge themselves, or is unable to obtain or understand the information required. The Assessor should therefore check relevant standards or guidelines for the answers to clinical questions before making a request. **(Policy requirements)**

- 3.18 Clinical advice will usually be requested as part of a documented discussion (face to face or over the telephone), but can also be provided in writing. Generally, requests that cover a long period of care or require an explanation of more complex clinical treatment are more likely to be suited to written advice. The Assessor should make an appropriate decision based on the individual facts of the case. **(Policy requirements)**
- 3.19 When making a request the Assessor should ensure it is clear, informed and proportionate. The request should be in relation to the complaint being considered and the questions should be focused and specific to the clinical aspects. **(Policy requirements)**
- 3.20 Further information about getting clinical advice is at Annex F. Further information about when written advice may be more appropriate is at Annex G. An induction and guidance pack is also available for our internal clinical advisors²⁶.

Resolving cases without an investigation (resolution)

- 3.21 Resolution means delivering an answer or outcome for a complainant that fully resolves the complaint they have brought to us. This must be a complaint that we can legally consider, but could include complaints that are not properly made or ready for us to look at. It is for us, and not the complainant, to decide whether the actions of the organisation have resolved the complaint.
- 3.22 The Assessor should consider attempting a resolution where it appears that, with minimal intervention, they could achieve a satisfactory result for the complainant. **(Policy requirement)** This could include asking an organisation to provide financial redress, or to consider service improvements.
- 3.23 The Assessor can only **request** that action is taken to resolve a complaint and it should be made clear to both the complainant and organisation that we are not making recommendations as part of a formal investigation at this stage. **(Policy requirement)**
- 3.24 If an organisation decides not to agree to a resolution, then this should be clearly audited on MSD. The Assessor may then decide we should propose to investigate the case.
- 3.25 If a resolution is agreed then this should be recorded on MSD and a compliance plan should be created. The Assessor is then responsible for ensuring the action agreed is taken by the organisation and then closing the compliance plan. **(Policy requirements)**

²⁶ [CAD - IPA Induction and Guidance](#)

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There is no definition of a resolution in our legislation. A case closed as a resolution is a decision not to investigate and must be issued in line with the normal requirements. **(Legal requirement)**

Cases we are more likely to investigate

Potentially avoidable death

3.26 We define avoidable death as when it is more likely than not that the person would have survived if the failings in care which we have identified had not happened.

3.27 We start from the presumption that we will investigate health complaints where there are indications of serious service failure which could have impacted on an individual's chances of survival. However, we must still exercise discretion appropriately and there will be exceptional circumstances in which we do not investigate such cases. **(Policy requirement)**

Avoidable serious harm and wider public interest

3.28 We are also more likely to investigate complaints where there are indications of avoidable serious harm. **(Policy requirement)** We consider avoidable serious harm to be when, on the balance of probabilities, the person would not have experienced whatever the serious impact was, for example ongoing pain and disability or prolonged mental illness, had the service failure not occurred.

3.29 We are also more likely to investigate if there is a wider public interest. **(Policy requirement)** This could include, for example, where we have identified a systemic issue with an organisation's process or where a large number of people have been affected.

3.30 In considering whether to investigate these cases, we should still exercise our discretion appropriately and there will be exceptional circumstances where we will decide not to investigate. **(Policy requirement)**

Proposal to investigate

3.31 The law²⁷ requires us to give the organisation complained about and any person²⁸ specifically named in the complaint the opportunity to comment on any allegations contained in the complaint. **(Legal requirements)**

3.32 The Assessor should send a 'proposal to investigate' letter to the organisation promptly after the decision is made to pass the case for investigation. The letter should include a broad statement of the complaint we propose to

²⁷ 1967 Act, Section 7(1); 1993 Act, Section 11(1)

²⁸ 'Person' includes companies, partnerships, sub-contractors as well as individuals.

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investigate as well as the claimed injustice and the outcome sought (which must be something both we and the organisation can achieve). This should also clarify that we are asking for comments about the allegations made (not on our decision to propose to investigate). **(Policy requirement)**

3.33 If the ‘proposal to investigate’ letter is being sent to a family health service provider (for example a GP practice), then the Assessor should also ask for confirmation of the type of contract they hold with the NHS.

3.34 If we have already obtained an agreement that the organisation does not want to receive the draft report in not upheld cases, then this should be mentioned in the proposal to investigate letter. This is to remind the organisation of this agreement and give them the opportunity to say if they do want to see a draft report. **(Policy requirement)**

3.35 The Assessor should also send a copy of our ‘proposal to investigate’ letter to the complainant and, where relevant, the aggrieved, representative and MP. This should be sent promptly after the decision is made to pass the case for investigation. In this letter they should make it clear that we have not yet started our investigation and this decision will be made by the Investigator. **(Policy requirements)**

3.36 We will sometimes decide not to investigate all of the issues the complainant has raised. In these instances the Assessor must clearly tell the complainant in the proposal to investigate letter which issues we do and do not propose to investigate and the reasons for those decisions. **(Policy requirement)**

3.37 The Assessor should ensure for any areas of the case we propose to investigate, that a decision is recorded on the relevant complaint part to say it is ‘in scope’. **(Policy requirement)**

Writing to the organisation - parliamentary complaints

3.38 The Assessor will usually send the proposal to investigate letter to the Permanent Secretary if the complaint concerns a government department or to the Chief Executive if it concerns an executive agency.

3.39 The Assessor should always address the letter to the named ‘Principal Officer’. However, the Assessor will need to check our individual arrangements with organisations to confirm who else this letter should be sent to. **(Policy requirement)** Where an organisation has a specific liaison or focal point for our casework the Assessor should also send a copy to them.

Where a second tier or other complaint handler have been involved

3.40 If we decide to only investigate the actions of either the organisation (who provided the service to the complainant) or the second tier, we are only

required to give the organisation we propose to investigate the opportunity to comment²⁹ (including any contractors providing a service on their behalf).

3.41 We should still write to any organisation that has been involved in the complaint or how it has been handled though to ask for comments if this is required for the purposes of the investigation or report. **(Policy requirement)** (For example we consider we need comments from a named person or the organisation on events complained about.) Where the second tier complaint handler is only acting as a complaint handler on behalf of an organisation we can investigate, then we are legally required to give the original organisation the opportunity to comment.³⁰ **(Legal requirement)**

3.42 If we decide to only investigate the actions of either the organisation (who provided the service to the complainant) or the second tier, we are only required to give the organisation we propose to investigate the opportunity to comment³¹ (including any contractors providing a service on their behalf). **(Legal requirement)** It is our policy that the Assessor should still write to any other organisation who has been involved in the complaint or how it has been handled to ask for their comments. **(Policy requirement)**

Writing to the organisation - health complaints

3.43 We are required to give the health service organisation, family health service provider or independent provider the opportunity to comment on any allegations made in the complaint³². **(Legal requirement)**

3.44 Where a complaint is made about a health service organisation we should normally write to the Chief Executive and copy to the relevant complaints team or complaints manager within that organisation. In respect of a family health service provider we should write direct to that organisation (for example a GP practice). **(Policy requirements)**

3.45 Where an independent provider is to be investigated, we should write to the Chief Executive (or equivalent) of the provider. Note: this should be directed to the provider organisation (for example, UK Specialist Hospitals Ltd) rather than only to the provider location (for example, a treatment centre). **(Policy requirements)**

²⁹ 1967 Act, Section 7(1); 1993 Act, Section 11(1)

³⁰ This is because any second tier complaint handler who handles complaints on behalf of an organisation we can investigate is taking administrative action on behalf of that organisation. We therefore must give that organisation the opportunity to comment.

³¹ 1967 Act, Section 7(1); 1993 Act, Section 11(1)

³² 1993 Act, section 11

Named persons

- 3.46 The law³³ requires us to offer any person specifically named in the complaint as ‘having taken or authorised the actions complained of’ the opportunity to comment on any allegations made in the complaint. **(Legal requirement)**
- 3.47 The Assessor should record on MSD anyone mentioned in the complaint as a named person who meets this definition. **(Policy requirement)** This applies in both health and parliamentary cases and includes the actions of any administrative staff complained about as well as those of clinical professionals. A named ‘person’ could also consist of an organisation such as a company or partnership. (For example a company carrying out work on behalf of an organisation in jurisdiction.) If unsure, our default position should be to include the individual or organisation as a named person to ensure we meet our legal obligations. **(Policy requirement)**
- 3.48 The Assessor should send the proposal to investigate to the organisation complained about and ask for it to be forwarded to the named person. **(Policy requirement)** Where needed, they should check in advance that the named person still works there.
- 3.49 In instances where an individual or organisation are named in the complaint, but their details are unknown, the Assessor should contact the organisation complained about to find out if they are still an employee. If the named person is a clinician they should also ask for details of their position at the organisation and details of any professional registration. If these details cannot be established then a record should be made on MSD highlighting this to the investigator. **(Policy requirements)**
- 3.50 Our letter must make it clear that the named person’s actions will specifically be investigated and that they have their own opportunity to comment on the allegations made. **(Policy requirement)** They should also be invited to contact us directly if they wish to discuss the complaint further.
- 3.51 We should make all reasonable efforts to trace a named person to give them the opportunity to comment. However, if we cannot do so (within a reasonable time) we may proceed without having a response from the named person. This decision should be taken on a case by case basis and taking into account all relevant circumstances, including the seriousness of the allegations made against the named person. **(Policy requirements)**
- 3.52 Template proposal to investigate letters are available:
- [Standard Letters - 2h - Accept for formal investigation \(Health\) - Joint Working - letter to organisation \(+ NHS checklist\)](#)

³³ 1967 Act, Section 7(1); 1993 Act, Section 11(1)

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- [Standard Letters - 2g - Accept for formal investigation \(Health\) - Joint Working - Letter to customer](#)
- [Standard Letters - 2d - Accept for formal investigation \(Parly\) - Letter to customer](#)
- [Standard Letters - 2f - Accept for formal investigation \(Parly\) - 2nd Tier orgs - Letter to Organisation](#)
- [Standard Letters - 2e - Accept for formal investigation \(Parly\) - 2nd Tier orgs - Letter to customer](#)
- [Standard Letters - 2c - Accept for formal investigation \(Parly\) - letter to organisation](#)
- [Standard Letters - 2b - Accept for formal investigation \(Health\) - letter to organisation \(+ NHS checklist\)](#)
- [Standard Letters - 2a - Accept for formal investigation \(Health\) - Letter to customer](#)

Categorising investigations

3.53 If a case is accepted in principle for investigation the Assessor should assign it to an appropriate investigation category: straightforward, standard, or complex. This should be recorded on the categorisation tab of the MSD record and on the case assessment checklist. **(Policy requirements)** More information on categorisation is at Annex C.

3.54 There are no specific considerations that would automatically make a case straightforward or complex and each case needs to be considered individually. **(Policy requirement)** Some points the Assessor should consider are:

- The risk rating and profile of the case.
- The need for specialist or multiple amounts of advice.
- Whether multiple organisations or strands of complaint are being investigated.
- How resource intensive the case may be to investigate.
- The likelihood of the organisation's compliance with our recommendations.

Referring a case to complex investigations

3.55 If the Assessor considers a case should be classified as complex then they should discuss this with their manager and then email the Assistant Director of Investigations for Complex Health Investigations. **(Policy requirement)** The email should give the case details, who the case has been discussed with and why it is considered complex.

3.56 If this is agreed the category should be amended on the case assessment checklist and the complexity category on MSD changed to complex. If there is a physical file this should be sent to the relevant Business Support Manager.

Other considerations before accepting a complaint for investigation

Linked to lead

- 3.57 In some types of complaint, especially where a large number of people have been affected by the same error and seek a similar remedy, we might choose to investigate a small number of lead complaints that exemplify the issues complained about.
- 3.58 Those not being treated as lead cases will be declined but with the details of the complaint retained to allow us to take action, as necessary, to contact the complainant once the lead complaint or investigation is completed. If a complaint is subsequently made to us about a matter already covered by a lead investigation, then we will also close the complaint as being linked to the lead investigation and retain the details of the complaint with the other linked cases.
- 3.59 The decision to close a case as linked to lead should be explained on the case assessment checklist. The case we are closing should also be connected to the linked case. On MSD this decision should be recorded as 'other reason to decline'.

Referring a case to the relevant team

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- 3.60 If we propose to investigate a complaint the Assessor should check the correct principle category has been added to MSD before passing the case for investigation. **(Policy requirement)** A list of available principle categories is available³⁴ and further information can be found in the Casework Categories and Themes policy in section 5 of the [Service Model General Guidance](#).
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Prioritising a case for investigation

- 3.61 In exceptional circumstances we may decide a case should be prioritised for investigation (such as when a complainant has a terminal illness). If the Assessor considers this appropriate they should discuss this with their line manager first. They should then ensure this decision is fully audited on MSD. **(Policy requirement)**

Passing a case for allocation to an Investigator

- 3.62 Before a case is passed to investigations, the Assessor should ensure that the casefile (physical and/or electronic) is ordered properly and material evidence is appropriately flagged and referenced **(Policy requirement)**. We define material evidence as '*evidence we have considered that we have either relied upon or has influenced our assessment*'.

³⁴ [General Guidance - Casework categories and themes - Active Categories](#)

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- 3.63 Once the case has been passed for investigation, the Assessor should go onto the investigation record and add the organisations to investigate on the organisations tab.

Allocating cases to investigations

- 3.64 The Business Support Officer responsible for allocating the case should check all relevant details on the MSD record for accuracy (usually on the same day as receiving a case). They should then take action on any comments made by the Assessor concerning how the case should be treated (such as a request that a case is allocated as a priority). They should update complainants and organisations every three weeks until the case is allocated to an Investigator. **(Policy requirements)**
- 3.65 The Business Support Officer should allocate the next case available to an Investigator, as soon as one becomes available, within the correct specialist investigation team (for example a GP complaint is passed to the primary care team) **(Policy requirement)**. This includes cases where papers and comments have not yet been received. The 'Investigation allocated' milestone (Milestone 1) should be recorded as completed on MSD at this stage.

Approving decisions

- 3.66 A decision to decline a complaint for investigation or to issue a proposal to investigate should be agreed in line with the [Delegation Scheme](#) **(Policy requirement)**. Unless otherwise stated it is not a requirement for the member of staff approving the decision to also physically sign out the decision.

Decisions signed by the Ombudsman

- 3.67 Decisions to decline complaints on cases referred by the Speaker of the House of Commons, the Chairman and members of the Public Administration and Constitutional Affairs Committee, the Chairman of the Health Committee, the Chairman of the Public Accounts Committee and all party leaders must be signed by the Ombudsman, Chief Executive Officer & Deputy Ombudsman or Executive Director of Operations and Investigations & Deputy Ombudsman. **(Policy requirement)**.
- 3.68 It is not a requirement for proposals to investigate, withdrawn or not properly made cases³⁵ referred by these MPs to be signed out by the Ombudsman, Chief Executive Officer & Deputy Ombudsman or Executive Director of Operations and Investigations & Deputy Ombudsman. **(Policy requirement)**
- 3.69 Letters that need to go through the Corporate Casework team should be checked and approved by a manager first. A request should then be sent to the Corporate Casework team using the referral form on MSD. If a physical file

³⁵ A case is not properly made if it is passed to us by an MP without the consent of the complainant.
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exists then this should be sent to the Corporate Casework team at the same time.

3.70 In parliamentary cases, where a covering letter is required for the MP's copy of the final decision letter, it should be signed by the Ombudsman, Chief Executive Officer & Deputy Ombudsman or Executive Director of Operations and Investigations & Deputy Ombudsman as well. Please include an appropriate draft covering letter when submitting the case.

3.71 Any queries regarding cases to be signed by the Ombudsman should be directed to the Corporate Casework Team.

Issuing decisions not to investigate

3.72 In parliamentary cases the decision letter should be addressed to the complainant with a copy sent to the referring MP³⁶ under a brief covering letter. **(Legal requirement)**

3.73 In health cases the decision letter should be addressed directly to the complainant³⁷ (and a copy sent under a brief covering letter to any MP involved). **(Legal requirement)**

3.74 If there is a separate aggrieved party who is not the complainant then we should consider on a case-by-case basis as to whether a separate copy of the decision letter should also be sent to them.

3.75 Professional representatives or advocates can also be sent copies of decision letters providing we have appropriate authorisation from the complainant/aggrieved for them to act on their behalf. (In cases where the representative or advocate is the complainant then the letter will have been addressed directly to them in any case.)

Customer Care

3.76 Any decision issued by Customer Services should remind the complainant about our process if they have feedback about our decision or service.
Example wording:

'If you have any questions then please contact me using the details given at the top of this letter. Alternatively, you can contact our Customer Care Team if you have any feedback about our service or decisions we make during your time with us. Please call us on 0345 015 4033 (select option 3) or by email at feedbackaboutus@ombudsman.org.uk.'

Customer survey

³⁶ Section 10(1), 1967 Act.

³⁷ Section 14(2), 1993 Act.

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3.77 Complainants will have received information about the customer survey (and the possibility of opting out) as part of the initial acknowledgment of their complaint. However, depending on the length of time a case has been in the office, it may be necessary to include a reminder about the customer survey with our decision. A decision about whether to include this reminder should be taken on a case by case basis (for example, a case closed within one month of receipt is unlikely to need a reminder). Example wording:

‘Our independent research company may also invite you to take part in a survey to help us improve our services. If you would prefer not to take part please call us on 0300 061 4222, or email customersurvey@ombudsman.org.uk. Information passed to and collected by the research company is kept in the strictest confidence and used for research purposes only’.

3.78 If a complainant asks not to be contacted for the customer survey then this should be noted on their complainant record on MSD.

Risk assessment

3.79 Case risk should be assessed at the point at which a decision is being made not to investigate or at which a proposal to investigate is being sent. **(Policy requirement)** Please remember that risk assessment should include consideration of any conflicts of interest (both of the casework staff and of senior staff). Please refer to the risk section in the [Service Model General Guidance](#).

Section 4. Investigation: Introduction

4.1 This section is to be used by staff undertaking investigations. It is intended to provide guidance on the considerations that must be made at each of the 5 main steps of the investigation process.

4.2 Whilst there are some actions that must be undertaken due to legal and policy requirements, large parts of the investigative process rely on discretion and judgement. Any divergence from the stated requirements in the guidance should be recorded and explained on MSD.

4.3 The 5 steps of the process are:

- Review, confirm and plan the investigation
- Undertaking the investigation - gathering evidence
- Undertaking the investigation - analysing the evidence
- Communicating the draft decision
- Communicating the final decision

4.4 Additionally, there are 7 investigation milestones which detail the key stages of an investigation. Each milestone button should be pressed as completed on MSD once the required actions have been carried out. The 7 milestones are:

- Milestone 1: Investigation Allocated
- Milestone 2: Investigation Confirmed
- Milestone 3: Evidence/Advice requested
- Milestone 4: Ready for analysis
- Milestone 5: Draft report issued to body and complainant
- Milestone 6: Receipt of draft report comments
- Milestone 7: Final Report issued

Section 5. Investigation: Review, confirm and plan the investigation

Case file review

5.1 Review the case to determine:

- What has happened so far.
- Reasons for investigating.
- What was in the statement of complaint.
- Whether there have been any replies to the proposal to investigate letters.
- Whether the appropriate case papers have been requested/received.
- Any risk issues.
- Any diversity issues.
- Any communication preferences.
- What complaint parts have been added and whether these require revision

Comments on statement of complaint

5.2 The law³⁸ requires us to give organisations and individuals an opportunity to comment on the complaint that has been brought to us (not on the proposal to investigate), so we need to take a decision on whether to go ahead with the investigation, having seen any comments made on the complaint.

5.3 There is no requirement to follow up with the organisation to get a response. We may confirm the investigation without having had the response within the timeframe set in the proposal to investigate letter. If there is delay at this stage or a suggestion of non-cooperation then that should be taken into account in the risk assessment.

5.4 If an organisation challenges our jurisdiction then the risk rating should be reviewed and advice sought from the Legal Team.

5.5 Any response to the proposal to investigate should be looked at by the Investigator and a decision taken on whether to go ahead, based upon what the organisation has said:

- Organisation declines to comment or there is nothing in the reply that casts doubt on the proposed investigation: case accepted and investigation proceeds.
- Organisation's comments cast doubt on the proposed investigation or suggest that it would be inappropriate or unnecessary to proceed (including where the organisation offers an appropriate resolution): investigation discontinued, if we accept the organisation's response.

³⁸ 1967 Act Section 7 1993 Act Section 11
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Scope

- 5.6 Using the statement of complaint, case papers and any comments received; carry out a detailed scoping of the investigation (**Policy requirement**). This should involve carefully picking out the main points of the complaint to be investigated and then clearly and concisely setting them out, together with the claimed injustice and outcome sought so that all parties are clear about the focus of the investigation.
- 5.7 The Investigator should ensure that the parties understand and accept the scope of the investigation before the investigation is confirmed (**Policy requirement**). Without acceptance of the scope from the complainant, we cannot continue the investigation. If the complainant is unhappy with the scope, then the Investigator will need to make a proportionate judgement on whether it is worthwhile pursuing acceptance in light of the issues scoped. For example, we may decide to continue talking to the complainant to get the scope agreed if the alleged service failure/ maladministration or claimed injustice is more serious.
- 5.8 If the organisation complained about does not accept the scope, the matter should be escalated to a line manager to discuss the most appropriate way forward.

Expanding the scope

- 5.9 We can expand the complaint and include additional factors not already raised by the complainant as long as they are relevant to the substantive complaint or the alleged injustice. We should look at whether the additional factors can reasonably be considered to be related³⁹. For example, if we consider there to have been a significant delay or there are issues around quality of complaint handling these could be relevant and added in.
- 5.10 If we want to widen the scope of the complaint, we should agree the amended scope with the complainant (**Policy requirement**). We should not proceed with the widened complaint if the complainant does not agree. (In that case we would have to decide whether it was possible to carry out a proper investigation if it was limited to the original complaint and, if not, we should consider whether to discontinue). If we do widen the scope, this should be accurately recorded and the organisation provided with details of the amended scope.

³⁹ Miller v PHSO [2015] EWHC 2981, October 2015 - *'The investigator here, was therefore, entitled to reconsider the scope of the investigation, and act accordingly, provided that the complaint could reasonably be interpreted as complaining about the actions to be investigated'*.

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Planning

5.11 An investigation plan should be documented on all cases (**Policy requirement**). The plan should show how the Investigator intends to close the case by the target date chosen - including dates when the key activities will take place by. A good plan should:

- Be proportionate to the complaint. Straightforward cases are more likely to have a much more concise plan.
- Have a clear timetable in it, which sets out what actions are to be taken and by when.
- Be clear about exactly what evidence we are likely to need, how we will gather that and by when. It is also important to clearly document the reason why we want to obtain this evidence, making sure we are clear on how this evidence will help address the points of complaint.
- Reflect the complaint. For example, if the scope has changed from the statement of complaint then we should note this.
- Be a live document that reflects developments on the case. The plan should therefore be updated whenever necessary.

5.12 It is up to the Investigator as to how they wish to record the plan. As long as a plan is documented (and clearly identifiable) on the case, covering the above points, it does not have to follow a specific structure. An optional [Investigation plan](#) template is available.

5.13 The plan should be discussed, ideally by telephone, with all parties to the complaint, in all investigations (**Policy requirement**). The plan should explain the intended target date for conclusion of the investigation and the key milestones of activity. For example, evidence we are likely to obtain, interviews we may conduct, when the draft report is likely to be shared.

5.14 The Investigator should agree how, and how often, they will communicate with the parties and record this. If there are any changes to the plan, then they should be informed as soon as possible and the updated plan explained to them.

5.15 For cases about family health service providers, (for example GP practices) the Investigator should check that we have received relevant details about the contract they hold to ensure the correct details are recorded on the case. This information would have been requested in the 'proposal to investigate' letter sent by the Assessor.

Joint working cases

5.16 If an Investigator establishes that a case they are considering concerns joint working, then this must be discussed with the Investigation Manager of the joint working team. (**Policy requirement**)

- 5.17 If the Investigation Manager decides the case concerns joint working then the joint working team should take over consideration of the case. Consent must be requested from the complainant and the [Joint Working Case Transfer Form - for assessment](#) form completed. **(Policy requirements)**. The casefile should then be passed to the joint working team's Business Support Officer.

Delays on cases

- 5.18 If there is going to be, or has been, a delay on the case then there needs to be an accurate record of this explaining why **(Policy requirement)**. The note can be added by Business Support. It does not matter where the note is recorded (on the plan or as a separate task note on the case) as long as there is a record.
- 5.19 If the case looks like it is going to be delayed beyond the target date, this should be discussed with a manager as soon as possible for them to consider how to proceed. If the target date is moved, there must be an audit trail on MSD detailing the decision to move the target date, the reason/s why and who the decision was made by. Changes to target dates must be agreed at Investigation Manager level or above.

Updating the plan and general audit trails

- 5.20 As the plan is a live document, any significant updates must be made in the original version, with clear indication, in the plan itself, of the date it was updated and why.
- 5.21 Any activity or decisions on a case must be accurately recorded on MSD by the Investigator or manager (this includes significant discussion on a case in a 1:1 meeting) **(Policy requirement)**.
- 5.22 When a manager conducts a review of a case other than at a 1:1 - this must also be recorded on MSD by the manager, giving their view on the progress and any actions set out to conclude the case. **(Policy requirement)**

Complex Health case requirements: planning and precedent checks

Planning

- 5.23 The plan should be taken to a planning meeting with two Investigation Managers (if two are not available, the meeting should go ahead with one), one of whom will formally agree the plan **(Policy requirement)**. During this meeting the Investigator should flag any particular concerns relating to, for example, the scope of the investigation and any specific discretion considerations.
- 5.24 An investigation plan should be documented on all cases **(Policy requirement)**. The plan should show how the Investigator intends to close the case by the target date chosen - including dates when the key activities will

take place by. Complex investigation plans should be prepared using the [Complex Investigation Plan](#).

Precedent checks

5.25 Precedent checks should be completed as a matter of course at the beginning of the investigation. These are electronic checks carried out on the records we hold about the organisation/s we are investigating. We look to identify recurring issues about these organisations dating back over the past two years. The purpose is to identify possible trends and give the Investigator some context about the organisation. If appropriate, we might also identify other cases with the same complainant and check if named person(s) had been previously complained about.

5.26 The check should be carried out by Business Support (who can identify similar issues) but it is the Investigator's responsibility to look over the checks for any common themes with the investigation. Precedent checks should be undertaken using complaint parts on MSD.

Contacting the parties at the start of the investigation

5.27 Contact with the complainant should take place in all cases (**Policy requirement**), ideally by phone. However, the Investigator should consider the complainant's preferences and availability which may mean contacting them by letter or email instead.

5.28 Ideally, contact with the complainant should take place once the investigation has been scoped and the plan written so that both the scope and plan can be discussed with them at the same time and acceptance obtained. The Investigator should therefore aim to cover the following points when contacting the complainant:

- Introduce self and role.
- Confirm understanding of complaint, injustice and outcome sought.
- Manage expectations.
- Discuss investigation scope, check that this is understood and accepted.
- Discuss the investigation plan including key activity milestones and intended target date.
- Explain how we will conduct the investigation (establish the facts, look at what happened, what should have happened and whether there was a gap)
- Identify any further useful information.
- Establish any diversity issues, communication preferences or reasonable adjustments needed (further information available at paragraph 1.29).
- Confirm the ongoing communication arrangements, give an overview of how we will conduct the case and provide estimated timescales.

5.29 If it is not possible to contact the complainant, record why and details of how and how often the contact has been attempted.

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Contacting the parties throughout the investigation

5.30 Relevant information should be shared with all parties throughout the life of the case. **(Policy requirement)** These contact points are opportunities to explain what the evidence is showing us, or talking to the parties about what some particular findings might be. In accordance with our legislation⁴⁰, we can only release information we obtain if it is necessary to do so as part of our investigation or to help us explain our decision. However, this does not stop us from sharing information about the investigation with those involved in it and keeping them regularly informed. We want those involved to be able to follow our progress and thought processes about a case, whilst remaining impartial and not letting them influence our decision. Any communication with the parties must be clearly and accurately documented .

Routing health cases to complex

5.31 When deciding whether a health case could be considered complex and passed to a Complex Investigator, staff should consider the criteria set out at Annex C.

5.32 Cases which an Investigator thinks should be categorised as complex, should be discussed with a manager. If the manager agrees, they should then email the Assistant Director of Complex Health Investigations. The email should contain details of the parties, the complaint put to us, who the Investigator has discussed the case with and why it is considered complex, with reference to the relevant criteria.

5.33 If it is agreed that the case is for complex, the case category should be amended and the file sent to the relevant Business Support Manager. In the complex Assistant Director's absence, a complex Investigation Manager will consider requests.

Confirming the investigation

5.34 We do not have to confirm the investigation in writing, unless it has been specifically requested that we do so or the scope has changed significantly. For all other cases, we can confirm to both the complainant and organisation by phone, email or other means. We must ensure that however we confirm the investigation; we are clear with the parties that this is the point at which the investigation has begun. At the same time, we must ensure that there is an accurate record on MSD explaining that we have now confirmed the investigation, along with details of how we have confirmed and any other comments or feedback we have received about the scope **(Policy requirement)**.

⁴⁰ 1967 Act Section 11 and 1993 Act Section 15.

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- 5.35 We should be clear from the beginning with all parties about what our investigative approach is (that we will establish the facts and look at what happened, what should have happened and whether there was a gap between what should have happened and what did happen) and the standards we use (Ombudsman's Principles, legal, policy and administrative), including, where possible to say at this stage, relevant professional standards.
- 5.36 At the point at which the Investigator confirms the investigation, milestone 2 ('Investigation confirmed') on MSD should be recorded as completed.
- 5.37 A risk assessment must be conducted when we confirm an investigation. **(Policy requirement)** Please remember that risk assessment should include consideration of any conflicts of interest (both of the casework staff and of senior staff). Please refer to the risk section in the [Service Model General Guidance](#) for further information.

Discontinuation

- 5.38 If having received comments on the statement of complaint, we decide we do not want to confirm the investigation; this should be dealt with as discontinuing the investigation.
- 5.39 If an investigation is discontinued then we must provide the relevant parties with our reasons for doing so, because we are taking a decision not to investigate.⁴¹
- 5.40 Any case, which the Investigator thinks should be discontinued, should be discussed with a line manager. The complainant should be told what we are proposing to do and why, and to be given an opportunity to give their views before the final decision is made. In some circumstances it may also be appropriate to seek the views of the organisation under investigation. Once comments have been obtained our final decision should be signed off in line with the [Delegation Scheme](#).
- 5.41 Discontinuation can occur at any point during the investigation and may be considered for a variety of reasons. For example, death of the complainant, where the complainant requests it or where an alternative legal remedy has been obtained.
- 5.42 If the complainant says they no longer want to proceed with the investigation, we should let the organisation know and any objections they may have around discontinuing should be considered.
- 5.43 We should also consider whether or not it is appropriate to still continue with the investigation despite the complainant's request to discontinue. Some factors to consider include:

⁴¹ 1967 Act, Section 10(1). 1993 Act, Section 14(1)-(2)
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- If we are near the end of the process and it would be unfair on those complained about not to complete the investigation.
- There is evidence of serious or systemic failings which needs to be addressed.
- The case raises issues of wider public interest.

5.44 If the Investigator is unsure how best to proceed, they should speak to their line manager and then document the discussion clearly on MSD. Any other proposal to discontinue should follow the process set out above.

5.45 If we decide not to investigate a case and there is an alternative route available to the complainant, then the Investigator should inform them of it. This may include signposting back to the organisation or suggesting a suitable advocacy agency. If a case is out of remit then the Investigator should try to identify another organisation, if possible, that can help and then direct the complainant to it. **(Policy requirements)**

Milestones

5.46 It is not a requirement to carry out all of the actions within each step in a specific order. The Investigator can also move ahead to the next stage of the Investigation before all the actions under the previous stage have been completed, if it is appropriate to do so. For example, if the Investigator has not yet spoken to the complainant but requests clinical advice because they are clear on the questions to ask the adviser.

5.47 However, only once all the actions under each step have been carried out, should the milestone be recorded as completed **(Policy requirement)**. The seven investigation milestones provide evidence of case progression and give an indication of where there might be delays in the casework process so it is important that the milestones are accurately recorded at the relevant time.

Section 6. Investigation: Undertaking the investigation - gathering evidence

Gathering evidence

6.1 At the planning stage, the Investigator will have set out what evidence is likely to be needed, how it will be obtained and by when. The Investigator will need to obtain the evidence set out in the plan. This may mean obtaining any or all of the following:

- Organisation's copies of original papers (unless originals are needed)
- Answers to specific enquiries from the organisation.
- Further evidence from the complainant.
- Evidence from third parties.
- Relevant standards (that is, the professional, administrative and legal standards that cover what is being complained about).
- Professional advice.

6.2 All information, evidence or professional advice received on the case should be recorded on MSD in line with our naming conventions, which are listed in Annex I.

6.3 We can obtain evidence in writing (including by email), by telephone, in person, at interviews, during telephone conferences or in case conferences. We should always aim to obtain evidence by whatever method is quickest and most proportionate (**Policy requirement**). Where possible, this should be done by telephone or email.

6.4 When seeking professional advice (legal, clinical, other specialist), we must be specific about the advice needed from advisers and ensure that we specify timescales for when the advice/evidence requested should be provided by. (**Policy requirement**) If we are involving several advisers, consider whether a case conference would be helpful.

6.5 We should obtain copies of original papers, although there may be some occasions where the originals will be required (if we have reason to doubt the copy). We normally accept as primary evidence the files/papers of second tier or other complaint handling bodies (which will include within them copies of an original organisation's papers).

Proportionality

6.6 We should ensure that the method we are using to obtain evidence is proportionate to the importance of the evidence we are trying to obtain, and to the potential outcome of the investigation. (**Policy requirement**)

6.7 The Investigator will need to assess whether the approach is necessary to achieve the desired outcome and whether it is the most reasonable way of doing so.

6.8 A proportionate approach would:

- Relate to the agreed scope.
- Include being aware of and considering any broader patient safety or public interest (taking account of other individuals affected and any systemic concerns as well as the individual injustice).
- Ensure a sufficient response is provided to all parts of the agreed scope.
- Be cost effective when carrying out the investigation, whilst taking account of customer service and legal requirements. For example, where information or evidence is unavailable or difficult to obtain then we should take into account the importance of that evidence when deciding if and how to pursue it.

Powers to obtain information

6.9 We have wide-ranging powers to request information or documents relevant to an investigation from any person⁴². This includes asking to see any legal papers or advice that the organisation complained about has obtained as part of their investigation.

6.10 It may be necessary when undertaking certain enquiries to refer to the Ombudsman's legal powers. If we experience difficulties at any stage of an investigation in obtaining documents or evidence from any party (for example, an organisation refusing to provide information) then the case should be escalated, initially to the relevant line manager. Further escalation, including to the Legal Team, should be undertaken as required.

6.11 We may not always need to make an enquiry of the organisation within jurisdiction to obtain guidance and legislation as we may be able to obtain details through our own information sources or from external sources.

Documentary evidence

6.12 Consider what documents are needed from the complainant or body. Clinical records are an obvious source of evidence but we should consider any documentation that the organisation may have which may help us reach a fair decision. Records can be obtained electronically, for example, on disks or electronic files.

6.13 In some circumstances, the amount or format (for example, computer files) of evidence may make it difficult for it to be sent to us. Where it is more practical or efficient to do so, consider arranging to visit the premises where the evidence is held. Such visits can also be justified on the grounds of

⁴² 1967 Act, section 8. 1993 Act, section 12

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efficiency if it would be quicker to view evidence on site than having it sent to us. If possible, such visits could be combined with conducting interviews with members of staff.

Clinical advice

6.14 The most common form of advice we will obtain is clinical advice from both internal and external advisers.

6.15 Clinical advice should be sought when we need the knowledge or expertise of a clinician in order to make a decision on a case. This will usually only be when an Investigator cannot be expected to have the relevant knowledge themselves, or are unable to obtain or understand the information required. The Investigator should therefore check relevant standards or guidelines for the answers to clinical questions before making a request. **(Policy requirements)**

6.16 Clinical advice will usually be requested as part of a documented discussion (face to face or over the telephone), but can also be provided in writing. Generally requests that cover a long period of care or require an explanation of more complex clinical treatment are more likely to be more suited to written advice. The Investigator should make an appropriate decision though based on the individual facts of the case. **(Policy requirements)**

6.17 When making a request we should ensure it is clear, informed and proportionate. The request should be in relation to the scope/complaint being investigated and the questions should be focused and specific to the clinical aspects of the complaint. **(Policy requirements)**

6.18 Where advice is needed from more than one discipline, this should be done, where possible, at the same time. (If advice about the impact of any failings from a different specialty is needed this will usually have to be done sequentially). If we are involving several advisers consider whether a case conference would be helpful.

6.19 Further information about getting clinical advice is at Annex F. Further information about when written advice may be more appropriate is at Annex G. An induction pack and additional guidance is also available for our internal clinical advisors⁴³.

Legal advice

6.20 Legal advice should be sought whenever you are unclear if you have sufficient knowledge is needed in order to progress or reach a view on a case. This advice will then be used to help us reach a decision.

⁴³ [CAD - IPA Induction and Guidance](#)

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- 6.21 Any legal advice provided by the Legal Team is subject to legal privilege. This means we do not have authority from the Legal Team to share the content of the request made, or the advice we receive. The risk is that if we share that information in part, we lose that privilege and we can be required to share it in full and with all parties. We therefore should only reference legal advice with the involvement of the Legal Team. **(Policy requirement)**
- 6.22 On occasion a caseworker may want to refer to a legal position they have received advice on in a decision letter or investigation report. In these instances they should use the advice received to help explain the relevant point of law in their own words. They should not directly quote the legal advice though and if needed, can seek advice on the drafting from the Legal Team. **(Policy requirement)**
- 6.23 If the caseworker considers it is highly important that they reference the legal advice provided directly, or disclose legal advice has been taken or received, then they should discuss this with the Legal Team before doing so. **(Policy requirement)**
- 6.24 If a complainant asks us directly if we have asked for or received legal advice then we can confirm that we have. We should clarify in our response though that we will not be sharing the advice itself. If the complainant asks for the advice, then this should be referred to the Legal Team.
- 6.25 The following paragraph should be sent to complainants or organisations to explain our position on legal advice if required.

“During the course of our investigation it is possible that we may need to seek legal advice on any matter that relates to the interpretation of legislation, and our powers to conduct or continue an investigation as a result of current law. That advice is confidential to PHSO and we will not be sharing with you either the content of the request we make or the advice we receive. In most of the work we undertake, it is not usual that we need to obtain or consider legal advice.”

Information from third parties

- 6.26 Requesting information from parties to the complaint or third parties should ideally be done over the phone or by email. The timescale we set for receipt of the information will depend on the case and information requested. If the Investigator is requesting information by email, they should use the [Egress](#) switch functionality and follow the Office’s [Protective Marking Scheme](#), which will classify and mark the information according to the level of sensitivity and impact if wrongly disclosed. When emailing stakeholders and other external organisations these emails should be marked as Sensitive. For more information about preparing documents for sharing, Egress and the Protective Marking Scheme please contact the IRM team.

Interviews

- 6.27 Consider whether it would be beneficial to conduct interviews, particularly in cases where the documentary evidence does not provide a clear picture of events or where we need to look into a particular area of concern.
- 6.28 Interviews can be in person or by telephone. The Investigator will need to consider the most appropriate method of doing so. If interviews are needed, the interviewees should be notified and the interviews arranged as soon as possible after the planning stage, even if the intention is to actually conduct the interview at a later stage (for example, after getting the clinical advice).
- 6.29 Notes of interviews should be written up and shared with those interviewed as soon as possible and comments sought on them. For lengthier or more complex interviews, it may be appropriate to record the interview and send the recording for transcription. Business Support can arrange this.

Arranging and conducting face-to-face interviews

- 6.30 Consider the most suitable location for the interview to be conducted in private (interviews can be held at our offices or elsewhere), including whether an independent venue such as an MP's constituency office or an advocate's office might be more appropriate. This may be the case if the interview is also going to be potentially distressing for the interviewee.
- 6.31 If staff members are setting up face-to-face interviews then they should discuss personal security and any relevant risk elements with line management as part of the planning for that interview. **(Policy requirement)**
- 6.32 If staff are carrying out off-site interviews with complainants and other third parties then an [Off site interview risk form](#) must also be completed, agreed by the relevant line manager and then saved to MSD.
- 6.33 Casework staff should attend a face-to-face interview, with a manager, colleague or clinician also present. **(Policy requirement)**
- 6.34 Interviewees may in some cases (because of individual preference or because of the sensitivity of the case content) make a specific request as to the gender of our interviewer. In those circumstances we should consider such requests on their individual merits.
- 6.35 Natural justice requires that the process of gathering evidence by interviewing must be fair. We should ensure, when interviewing any of the parties to the complaint, that they have a summary of the complaint being investigated. **(Policy requirement)** It may also be appropriate to provide a list

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of topics to be covered at the interview, plus (especially where the relevant events occurred some time ago or where they are to be asked to comment on the written material) a list (or copies) of the documents to which reference is to be made during the interview.

Arranging and conducting face-to-face interviews: the interviewee

6.36 Inform the interviewee that they can choose and arrange for a friend, colleague, legal adviser, trades union representative or defence organisation representative to attend with them if they wish.

6.37 It is generally our position that anyone attending with the interviewee may observe, but is not expected to participate in the interview. There may be exceptions to that, particularly for young or vulnerable people. We should also make clear to anyone accompanying the interviewee that they need to respect the privacy of the investigation. (Note: we do not have to allow a complainant or a witness to be represented or accompanied. It is a matter for our discretion and in some cases it may be inappropriate or hinder the investigation to allow it⁴⁴. For example, we might consider it inappropriate for someone from the interviewee's direct line management chain to accompany them, as this might inhibit the discussion).

6.38 Investigators should send interviewees a copy of the Notes for Interviewees (link to document) which contains details about what to expect at the interview, who is likely to attend and what happens afterwards.

Information Security

6.39 Our information is a key asset and needs careful and special protection against disclosure in accordance with its sensitivity and legislative requirements. Care is required when information is moved in and out of the office (whether physically or electronically). We take the need to protect the information we hold very seriously.

6.40 When communicating by email to a non-secure account, steps need to be taken to mitigate the risks non-secure email presents. This includes seeking consent, password protecting documents and double checking email addresses have been typed correctly.

6.41 When sending or returning original evidence we need to decide if this should be sent by Royal Mail, Recorded Delivery or DX. For irreplaceable items such as original medical records, birth certificates, it is advisable to send these by DX.

6.42 If Word documents such as letters or reports are sent to parties to the complaint by email, [Egress](#) (which provides security when sending information

⁴⁴Section 11(3)(b), 1993 Act. Section 7(2), 1967 Act.

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via non secure email) will encrypt emails and attachments that we classify as Sensitive according to the Office's [Protective Marking Scheme](#).

Material Evidence

6.43 Material evidence is defined as '*evidence we have considered that we have either relied upon or has influenced our investigation*'. In order to accurately record our material evidence, the following steps should be followed:

- Create a list setting out what evidence they have used to inform their decision - this can be done on a word document or the electronic casefile.
- Wherever the list is created, it should be clearly labelled as '*material evidence*' and should also detail where the document is on the electronic casefile.
- The list should be added to as staff work through the case, rather than adding all evidence at once when the case is closed.

Milestones

6.44 At the point at which the Investigator considers that all the evidence/information/advice required to undertake the investigation has been requested, Milestone 3 ('Evidence/advice requested') on MSD should be recorded as completed.

6.45 Once that information has been received and the case is ready for analysis, the Investigator should record Milestone 4 ('Ready for analysis') as completed on MSD.

Section 7. Investigation: Undertaking the investigation - analysing the evidence.

Analysing the evidence

- 7.1 Before reaching a decision on the case, we should ensure as much as possible, that we have obtained all of the information we need, including from the complainant, organisation/s and anyone else we identify as being able to provide relevant evidence.
- 7.2 In order to reach a decision on the case, we should consider and weigh up all the evidence that is available, ensuring that the decision is based on all the relevant evidence, is consistent with the facts and ignores irrelevant information **(Policy requirement)**.
- 7.3 We should take account of any expert advice received but we need to remember that we make the decision; expert advice should only inform it. We must clearly record the view that we have taken on any advice, including where we have decided not to follow it and why **(Policy requirement)**.
- 7.4 We should highlight and address any problems arising from contradictory evidence, the unavailability of important evidence or the reliability of oral evidence.
- 7.5 To assist with reaching a decision we should look to provide reasoned answers, as far as possible, to the following questions:
- Did something go wrong (looking at what did happen compared with what should have happened and referencing applicable standards).
 - If so, was it serious enough to be maladministration or service failure?
 - Did the maladministration or service failure lead to an unremedied injustice?
 - Is a remedy appropriate? (We should take into account what the complainant says they are looking for)
 - Is the proposed outcome consistent with other cases and any remedy proportionate to the injustice?

What did happen (did something go wrong)

- 7.6 Determining what happened can be established using the evidence gathered during the investigation, depending on the type of case and nature of the issues complained about.
- 7.7 Where there is conflicting evidence or uncertainty about what did happen, we should consider whether something is more likely or not to have happened, based on the simple balance of probability. In some cases there may not be

enough evidence or the evidence is so equally balanced that even on the balance of probability we cannot come to a judgement. In such cases, we should clearly explain why we have been unable to reach a decision. **(Policy requirement)**

What should have happened

7.8 It is for us to decide what standards should be used when trying to determine what should have happened. These will usually include:

- Ombudsman's Principles.
- Legislation, statutory powers and duties.
- Local policy and procedure.
- Other rules governing the service provided.
- Relevant professional standards.
- Any other recognised quality standards in place at the time of the events complained about.

7.9 When reaching a decision, we must refer to whichever relevant standards we have used to determine what should have happened. **(Policy requirement)**

7.10 If we want to use legislation as a standard in our casework we must be sure we can understand and interpret what we are referencing accurately. We also need to be sure we are referencing the legislation correctly and appropriately considering the individual circumstances of the case.

7.11 If the caseworker therefore has any uncertainty about applying the relevant legislation as a standard in the case they are dealing with, then they must first seek legal advice. **(Policy requirement)**

7.12 In health cases there may not always be clear standards, so the test we ask our clinical advisers to apply is what was 'established good practice' (this is not the same as 'accepted', 'best' or 'reasonable practice' or 'what could be expected') at the time. In health cases we must avoid the Bolam⁴⁵ and Bolitho⁴⁶ tests which refer to the reasonable body of clinical opinion because

⁴⁵ *Bolam v Friern Barnet Hospital Management Committee* (1957) ruled that a doctor "is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art . . . Putting it the other way round, a man is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion who would take a contrary view."

⁴⁶ *Bolitho v City and Hackney Health Authority* (1997) ruled that, in applying the *Bolam* test, "if, in a rare case, it can be demonstrated that the professional opinion is not capable of withstanding logical analysis, the judge is entitled to hold that the body of opinion is not reasonable or responsible."

this is the test courts use in negligence cases and we are not making determinations about negligence.⁴⁷

Was there a gap between what happened and what should have happened?

7.13 We must identify whether there was a gap between what happened and what should have happened. This should be done by comparing our view about what did happen against the standards relevant to the case. **(Policy requirement)**

7.14 We should not make findings on complaints that have not been brought to us⁴⁸ and are therefore not within the scope of the investigation. **(Legal requirement)** However, we can make factual comments about such matters. For example referencing poor clinical records if it impacts on our ability to determine what happened, even if a complaint about clinical records has not been brought to us.

7.15 We also need to ensure that we do not make legal determinations as it is not our role to adjudicate on matters of law or to determine whether the law has been breached: that is a matter for the courts. However, we can take a view on whether an organisation has complied with the law (we often use the law as a relevant standard). We provide an alternative to taking a case to court but are not a substitute court. We ask different questions from those asked in a court and look at different issues. The courts determine whether people have suffered damage as a result of unlawful actions, the Ombudsman considers whether people have suffered injustice as a consequence of maladministration or service failure. We have a wider range of remedies available than the courts.

Information received by the complainant from a third party (hearsay evidence)

7.16 We may be asked by a person involved in our investigation to consider oral or written information they heard or received from a third party as evidence that an action or event took place. For example; Mr Jones says Mrs Smith told him the GP said he was rude.

7.17 We should take into account any information the complainant has provided from a third party when conducting an investigation. We may have to place less weight on this information in reaching a decision though if we are unable to verify it for ourselves. **(Policy requirement)**

7.18 Before using information provided by a third party we should consider whether a direct source of evidence is available that could be used for the same purpose. **(Policy requirement)** For example; a prescription from a pharmacy showing the wrong dose of medication was prescribed may serve the

⁴⁷ *R (Attwood) v Health Service Commissioner* [2008] EWHC 2315

⁴⁸ *R (Redmond) v Health Service Commissioner* [2004] EWHC 1847

same purpose as a complainant saying another patient told them a GP mentioned the incorrect dose to a colleague.

7.19 If a direct source of evidence is unavailable, or we still want to use information provided by the complainant from a third party in our investigation, then we should try to verify its accuracy. **(Policy requirement)** This could include contacting the third party directly. For example; if a third party provides a written statement pertinent to our investigation, and leaves a telephone number, it would be reasonable for us to try to call them.

7.20 If we are unsure of the third party's details, we can consider taking reasonable steps to locate them. We should make sure though that this is appropriate and proportionate to the circumstances of the case.

7.21 We can still reference third party information we have been unable to verify in our investigation report if we consider it necessary to do so. We should be clear though on why we have used this information, and the weight we have placed on it in reaching a decision.

If there was a gap between what should have happened and what did happen, was this so far below the relevant standard that it amounted to maladministration or service failure?

7.22 In order to determine whether an error amounts to maladministration/service failure we need to make a judgement about how serious it was.

7.23 We should carry out a proportionate and focused analysis on the most relevant issues of complaint, taking a holistic view of the complaint and making an 'in the round' decision. We do not have to make a finding of maladministration/service failure on every point of the complaint.

7.24 At the same time however, we need to be careful not to lose sight of something which was such a serious failing on its own that it tips the scales towards service failure. Another possibility is that a series of minor faults mean that, on balance, we make a finding of service failure.

7.25 We should use relevant standards and any advice received to help determine the seriousness of the error identified. We should clearly document whether the gap between what happened and what should have happened does or does not amount to maladministration/service failure and the reason for that decision. **(Policy requirement)**

7.26 As not every error will be maladministration or service failure, it is very important that we make clear when something has fallen below the standard and when something has fallen so far below the standard to be maladministration or service failure. In order to differentiate between the two, it may be helpful to refer to errors which fall below the standard as 'mistakes', 'shortcomings', or referring to 'what went wrong'. For those which fall so far

below the standard, we can use the terms maladministration and service failure, along with ‘failings’ and ‘fault’ for example. Regardless of how we describe the error, we must be clear if it is maladministration or service failure **(Policy requirement)**.

Duty of Candour

7.27 We may receive complaints where the Duty of Candour has not previously been raised or considered, but we identify that there is a relevant Duty of Candour issue failing. Therefore, staff should be aware that the Duty of Candour may be relevant to a complaint even where it has not been raised earlier. For more detail about Duty of Candour complaints, please see [Service Model General Guidance](#) Section 6.

Did it lead to an unremedied injustice?

7.28 Where we find maladministration or service failure we need to decide whether it led to an injustice - that is whether the failing led to an adverse impact on the parties involved (complainant and/or aggrieved). If it did, then we need to take a view on whether the injustice has been put right **(Policy requirement)**.

7.29 We may find that the failing did not lead to an injustice or an injustice was suffered but not because of the maladministration or service failure. There are some cases in which it can never be known (even on the balance of probabilities) if there is a link between what went wrong and the claimed injustice. There are other cases where we will find that the link between maladministration and the claimed injustice is not established.

7.30 The key question is ‘did the injustice claimed occur in consequence of the maladministration/service failure we have found’ (not other things that may or may not have gone wrong). In health cases we are often guided on this by our clinical advisers, for example in relation to chances of survival, or impact of delay in treatment.

7.31 We can make findings of injustice which relate to the claimed injustice but we cannot invent injustice. If we think that an injustice flows from the maladministration/service failure but the complainant has not raised this with us, we should ask them if they want us to consider it during our investigation.

7.32 Injustice could include:

- Loss through actual costs incurred. For example care fees, private healthcare and loss of benefits.
- Other financial loss. For example, loss of a financial or physical asset (such as loss or damage to possessions), reduction in an asset’s value, and loss of financial opportunity.

- Being denied an opportunity. For example, to make a choice in the light of the full facts or risks (such as an informed consent decision in relation to a surgical procedure).
- Inconvenience and distress as a result of failures in service provision (for example, delay in receiving a benefit, worry over the effect of misinformation, cancelled operations, misdiagnosis) or where the handling of the complaint in itself has been prolonged or inadequate.

7.33 The [Typology of injustice](#) contains definitions of the injustice types that have been identified from our casework.

7.34 If the injustice did happen because of the maladministration or service failure then we need to look at whether the injustice is still unremedied because, in some cases, the organisation complained about may have provided an appropriate remedy.

What can the organisation do to remedy any injustice?

Remedy for the individual and those similarly affected

7.35 We use the Principles for Remedy to determine our approach to securing remedy. The remedy should be appropriate and proportionate to the injustice sustained. When an injustice is unremedied, our general approach is that we seek to put people back in the position they would have been in had the maladministration or poor service not occurred (**Policy requirement**).

7.36 We should have regard to the outcome the complainant/aggrieved is seeking when determining the remedy. However, the remedy should be determined by the impact on the individual. In some cases, we will need to contact the complainant to manage their expectations and explain that the remedy we are proposing to make is not the outcome they were seeking. If the complainant/aggrieved does not want us to proceed with the remedy, then we do not have to do so.

7.37 In cases where the injustice cannot be put right, compensation may be appropriate. Most often this is where we recommend payments related to personal impact such as distress, frustration, pain and inconvenience. The [Typology of injustice](#), remedy checks carried out by the Quality Assurance and Insight Team (++RemedyConsistencyChecks@ombudsman.org.uk) and casework discussions help us determine appropriate remedies together with reference to precedents and considering the circumstances of the individual case. Remedies will be determined by the impact on the individual (or individuals) concerned.

7.38 The types of remedy that we might seek to obtain will be tailored to the individual circumstances of the case (while taking account of similar cases). Appropriate remedies can include:

- Apologies, explanations or acknowledging responsibility - an apology should always be by personal communication from a suitably senior person within the organisation in jurisdiction to the aggrieved or his or her representatives. The apology should be specific in what it is addressing rather than general and should be for the injustice. Expressions of regret and apology made through this Office rather than direct to the aggrieved are not an appropriate form of remedy.
- Remedial action such as reviewing or changing a decision.
- Revising published material or revising procedures to prevent a recurrence.
- Financial compensation.

7.39 We should remember that it is for us to determine whether a remedy offered or proposed is appropriate.

Specific considerations in respect of financial remedy

7.40 When thinking about making recommendations for financial remedy, we should consider each individual case on its merits. The [Typology of injustice](#) contains a searchable database of a range of upheld or partly upheld investigations. This is intended to help caseworkers identify relevant precedent cases when thinking about recommendations for financial redress. Advice on proposed levels of recommendations for financial remedy can be sought from the Quality Assurance and Insight Team (++RemedyConsistencyChecks@ombudsman.org.uk).

7.41 Below are some points to think about when looking at questions of financial remedy:

- Both the final amount that is paid and the way this amount is calculated should be proportionate to the injustice resulting from the maladministration.
- Calculations of financial loss incurred by an individual should be based on evidenced and quantified loss. We may need to obtain an appropriate independent opinion, for example, legal or financial advice to check our understanding of the loss.
- Any delay between when the financial loss was incurred and the compensation payment date should be recognised by a payment of appropriate interest.
- Compensation should be appropriately linked to other forms of redress - for example, an apology.
- Some organisations within jurisdiction may have their own compensation schemes by which they judge levels of financial remedy in respect of maladministration or poor service. In recommending a level of financial remedy we are not bound by the rules or limits of such schemes.
- When considering the level of financial redress, we should also consider factors such as the impact on the complainant (were they particularly vulnerable; was

ill-health compounded; and injustice aggravated or prolonged?); the length of time taken to resolve the complaint and the trouble that the individual was put to in pursuing the complaint. When considering recommendations for payments for distress or inconvenience we should also take into account the level of payments made to others who have suffered a similar injustice.

- Financial compensation may be appropriate, additionally, for injustice deriving from the pursuit of the complaint (as well as the original dispute). For example, costs in pursuing the complaint or additional inconvenience or distress caused.
- Is the outcome consistent with other cases we have looked at and any remedy proportionate to the injustice?

Recording decisions on MSD

- 7.42 A complaint part is a way of recording an area of complaint raised with us (for example nursing care) or named person on MSD. We use complaint parts to record decisions on cases at investigation stage, and they should be added to represent the main heads of a complaint raised with us.
- 7.43 Complaint parts do not need to capture every single point of a complaint, but should broadly represent the key areas we will want to record a decision about. A decision should be recorded for each complaint part added. An overall decision should also be recorded for each organisation we have investigated using the organisations tab of the MSD record. **(Policy requirements)**
- 7.44 The decision recorded for a complaint part should only relate to the actions we have considered underneath it. Complaint parts will be added by the Assessor but they should be reviewed at the start and prior to closing the investigation to ensure they fully cover the complaint we have investigated. **(Policy requirements)**
- 7.45 We may consider that an added named person's actions are already entirely reflected in one of the other complaint parts added, for example; a named nurse and a complaint part about nursing care. In these instances we should record the same decision about both the named person and the complaint part. **(Policy requirements)**
- 7.46 The overall decision recorded about the organisation does not have to be a direct reflection of the complaint parts underneath it. **(Policy requirement)** For example; if the investigation relates to four complaint parts, three of which we do not uphold but are minor parts of the complaint, and the fourth we plan to uphold is the main area of complaint and concerns a serious injustice, then we can still decide to uphold the complaint if appropriate.

Recording recommendations on MSD

7.47 If we decide to make a recommendation, then this should be recorded under the relevant complaint part on the MSD record. If we make a recommendation that covers more than one complaint part, then a decision should only be recorded against the main area of complaint investigated. **(Policy requirements)** For example; if we recommended an apology for both the clinical care and treatment received and complaint handling, this recommendation would be recorded against the complaint part for clinical care and treatment as the main aspect of the complaint only.

7.48 If a compliance plan needs to be added to the case then this should be recorded on the complaint part. **(Policy requirements)** This will then automatically create a compliance item on the case. For more information about recording compliance items please see paragraph 9.68.

7.49 In accordance with our legislation⁴⁹ we can only release information we obtain if it is necessary to do so as part of our investigation or to help us explain our decision. **(Legal requirement)** However, this does not stop us from sharing more information about the investigation with those involved in it and keeping them regularly informed. We want those involved to be able to follow our progress and thought processes about a case. Any communication with the parties must be clearly and accurately documented **(Policy requirement)**.

7.50 This ongoing communication is designed to enable all parties involved to be able to follow our thought processes throughout the investigation, so that when draft report stage is reached, it should not come as a surprise to hear the draft findings and the action that has been taken on the case.

7.51 In addition to the sharing of emerging evidence, findings etc. we may also, in some cases, decide to share parts of the draft report or clinical advice at an early stage to try to resolve any disputed areas before the draft report stage:

- If we obtain early and very clear clinical advice which indicates that there was service failure we could share that advice with the organisation, under a brief covering note, in order to flush out objections or arguments at an early stage or to get agreement to further work on the complaint.
- If we have clear indications of an unremedied injustice flowing from maladministration we could share the key arguments and supporting evidence with the organisation to try and obtain early agreement to an appropriate remedy.

7.52 There may be rare circumstances where we cannot share information from the organisation with the complainant because of confidentiality or other legal restrictions. In those situations, organisations are likely to tell us that the information should not be disclosed. However, this may not happen in every case and, if we are concerned about whether it is appropriate to share

⁴⁹ 1967 Act Section 11 and 1993 Act Section 15.

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information with the complainant, we should contact the organisation to check.

Escalation

7.53 If as part of our decision making process, we consider that there might be a wider systemic problem (outside of the individual complaint) either in relation to a particular issue or a particular organisation, the Investigator should escalate the case to their manager so that a decision can be made about what action to take.

When is an investigation upheld?

7.54 Where we have found that an unremedied injustice arose in consequence of maladministration or service failure then a complaint will be upheld (fully or partly as applicable). A decision to partly uphold a complaint will normally result from a multi-strand complaint where we have only upheld some parts or a case where we found a lesser injustice than that claimed.

7.55 We will uphold (or partly uphold) complaints if we find that the injustice was remedied after the complaint was received by the Ombudsman but either before the start of, or during, an investigation. However, there may be some cases of this type where the organisation offers a full remedy and we do not make formal findings:

- If the full remedy is offered immediately in reply to the proposal to investigate. In these cases we may discontinue the investigation.
- The organisation offers a remedy during the investigation which is accepted by all parties and we close the case as a mediated outcome (the case is closed without making findings or recommendations).

7.56 Where we have found that an injustice arose in consequence of maladministration or service failure but that it was fully remedied before the complaint was received by the Ombudsman then a complaint will not be upheld.

7.57 If we find that there was maladministration or service failure but that an injustice did not flow from it, then the complaint will be partly upheld. In some cases we may decide that, even though we have identified potential failings, the organisation should review the complaint and consider how it might be resolved. For example, we may identify serious complaint handling issues which we consider should be improved by the organisation carrying out further work.

Recommendations

7.58 Recommendations in a report are normally used to obtain a remedy for the identified injustice. Recommendations must be relevant to the injustice found:

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whether this is to the complainant concerned; to others who have been affected or to those who might be so affected in the future. The remedy is to put right the injustice resulting from maladministration. It is not compensation for the maladministration. We should not make recommendations for cases which we have not upheld.

7.59 All remedies must be SMART (specific, measurable, achievable and realistic, with a timescale) (**Policy requirement**).

7.60 Discuss the proposed or requested remedy with the complainant and manage their expectations if they are seeking a remedy that would be unachievable or disproportionate.

7.61 For cases relating to the Duty of Candour, see [Service Model General Guidance](#) Section 6 for more detail about making recommendations on Duty of Candour cases.

Systemic remedy

7.62 We may also make recommendations for systemic remedy: to prevent a recurrence of the failings that we have found. Generally this should take the form of asking the body to propose their own solutions to the systemic problems we have identified in our report. Usually we do not make specific systemic recommendations. Our general approach is that it is for the individual or organisation to decide how to achieve the required changes and improvements. Most often systemic remedy is in the form of an action plan which asks the individual or organisation to set out what they will do and by when to address the failings identified in the report.

7.63 It may be appropriate to bring the need for a systemic remedy to the attention of the organisation at draft report stage with a view to opening a dialogue, which may also bring out the extent to which the body is aware of the problem and are taking/have taken steps to deal with it. It is not our role to direct the body as to the changes that they should make, although it is appropriate for us to guide the body if we consider that a specific form of remedy is merited.

Where the aggrieved has died

7.64 In cases where the aggrieved has died we must first consider whether to proceed with the investigation. We do not necessarily need a complainant in order to continue with the investigation once it has started. As such, there is no requirement to discontinue an investigation if a complainant dies. However, in those circumstances, a decision should be taken on whether or not to proceed.

7.65 For example, we may consider that there are learning points or wider public interest reasons for completing the investigation, although we would need to

balance this against the fairness of completing a report upon which the complainant cannot comment. Some other points to consider are:

- Whether there are other families who might act as a representative.
- The existence of a personal representative or executor.
- The stage the investigation is at (for example, there may be more merit in completing a case that is at an advanced stage).

7.66 A decision on whether to proceed with the investigation following the death of the complainant should be discussed with an Assistant Director and the outcome of that discussion recorded on MSD.

7.67 In cases where the aggrieved has died we will not automatically recommend that any financial remedy (which would have been payable to the aggrieved if they were alive) be paid to their family or to their estate. These cases should be considered on their individual merits, but the following should be considered:

- In cases of actual financial loss we can consider asking for payments that would have been due to the deceased to be made to their estate (for example, a special payment for loss of benefit that should have been paid while they were alive). However, we would need to be certain that any payment would have been payable to the deceased, were it not for the failings identified.
- We would normally only recommend compensation for non-financial loss for the family members of the deceased if they have suffered a specific injustice themselves (for example, emotional injustice as a result of witnessing the poor care given to their relative). We take this approach on the basis that, if someone has died, we cannot remedy the fact that they suffered distress or inconvenience.

Provisional findings of avoidable death and avoidable serious harm

What is avoidable death?

7.68 We consider an avoidable death to be when it is more likely than not that the person would have survived if the failings in care which we have identified had not happened.

What is avoidable serious harm?

7.69 We consider avoidable serious harm to be when on the balance of probabilities the person would not have experienced whatever the serious impact was, for example, ongoing pain and disability or prolonged mental illness, had the service failure not occurred.

Process

- 7.70 Investigators should contact the Assistant Director of Complex Investigations once they receive clinical advice that suggests we may make a findings of potential avoidable death or serious avoidable harm. The Assistant Director of Complex Investigations will then help determine the next steps, which may include obtaining further evidence, such as more clinical advice or proceeding directly to drafting the report.
- 7.71 Once the draft report is written, the draft should be passed to the Assistant Director of Complex Investigations for review before the report is signed off by the relevant Investigation Manager.

Section 8. Investigation: Communicating the draft decision

Sharing the draft - key principles

- 8.1 A full draft report of the investigation should be shared with the complainant and the organisation complained about, simultaneously, for all investigations. There may be exceptions when we decide not to share in this way. In these cases the reasons why the draft has been shared differently must be documented clearly. **(Policy requirements)**
- 8.2 The draft report must be shared with any person specifically named in the complaint **(Policy requirement)**.
- 8.3 The draft report should be shared with the organisation complained about by contacting the person who we wrote to originally asking for comments on the proposal to investigate **(Policy requirement)**. In Parliamentary cases this will normally be the Permanent Secretary or Chief Executive of the organisation in jurisdiction. In Health cases this will normally be the Chief Executive of the organisation in jurisdiction. Draft reports can be shared simultaneously with other parties within the organisation in jurisdiction as appropriate (for example, Agency Chief Executives (if the report was sent to the Permanent Secretary of a department), focal points or local complaint handlers).
- 8.4 At the point at which the Investigator sends the draft report to the complainant and organisation, Milestone 5 ('Draft report issued to body and complainant') on MSD should be recorded as completed **(Policy requirement)**.

Named persons

- 8.5 . Any individual or organisation who has been previously notified of the matters complained about and our investigation, normally at the 'proposal to investigate' stage, must be sent a copy of our draft report and their comments sought on our provisional decision. A named person can consist of a company or partnership.
- 8.6 For health complaints, if a complaint is made against a sole practitioner (who will have been recorded as a named person) then we share the draft decision directly with them. In all other cases (for example, if a Practice has more than one Practitioner) then the draft decision should be shared with both the organisation/provider and the named person.

How to refer to a named person

- 8.7 We should not usually identify named persons in the draft report. However, where we are reporting on the actions of clinicians who have personal contracts (such as GPs with PMS contracts) they are the body complained about and their names are used on MSD and in the report. However someone employed by an NHS body (such as a surgeon or a nurse) is not complained about in this sense,

even though their actions may be the focus of the complaint. Therefore their names should not appear in the ‘complaint about’ section of the report. Instead we should refer to them by their professional title (such as Midwife or Registrar) or by an abbreviation (Mr B or Miss J).

Content of draft decisions

8.8 It is important that our decision and the reasons for reaching that decision are clear in the draft report. We must also be clear in both the content of the report and in the covering letter that that this is a draft report, in which we are setting out our provisional findings and that we are asking for comments from the parties on our provisional view (**Policy requirement**).

8.9 Our investigation report template and checklist contains a list of points that should be considered when writing a draft report including the format and language we should be using. We also have a template report and template covering letters for both Health and Parliamentary cases. Both the checklist and templates can be tailored according to the case. The checklist is at Annex D.

- [Investigation report template parliamentary](#)
- [Investigation report template health](#)
- [Cover letter for Draft report - to complainant](#)
- [Cover letter for draft report - to named organisation](#)

Approving draft reports

8.10 Draft investigation reports should be approved in line with the levels set out in the [Delegation Scheme](#) (**Policy requirement**). The need for escalation of a case above those levels should be determined by the individual circumstances of the case.

How to share draft decisions

Contacting the parties

8.11 We should ensure that the parties to the complaint have the opportunity to discuss the report with the Investigator and that we take all necessary steps to assist with obtaining full comments on the report as quickly as possible.

8.12 We should give two weeks from the date the report is sent out, to respond for both the organisation and complainant, in all cases. Indicate clearly in the covering letter or email what the deadline is for comment and what we will do if we don’t hear back from them.

8.13 If we have not already identified any reasonable adjustments that the parties may need, we should use this opportunity to check whether any of the parties require us to make any adjustments in order for them to comment on the draft

report. These should then be included in the accessibility section of the complainant's records on MSD.

8.14 The following process should be followed:

- The Investigator should inform the parties when the issuing of the draft report is imminent and check whether there is anything that may prevent them from responding within the time frame. Ideally, the day the draft report is sent out Investigators should contact all parties to inform them it is coming, explain the period for comments and offer to discuss the draft over the phone with the parties at an agreed time (**Policy requirement**). The Investigator should also encourage either party to respond earlier, if they want to, or to submit their comments ahead of any arranged telephone conversation.
- If the parties wish to discuss the draft over the phone, the Investigator should call at the agreed time to discuss the draft and comments.
- Having contacted the parties, we can then consider the comments or allow more time if appropriate.

8.15 There will be exceptional cases, depending on the organisation complained about, the complainant or the actual complaint where a different approach may be required. This will need to be considered on a case by case basis. Where a different approach does need to be taken, the Investigator should ensure that the rationale for this is accurately recorded (**Policy requirement**).

8.16 Although rare to do so, confidential or sensitive sections of the draft could be shared with the organisation before draft report stage with the explanation that we are planning to share this information with the complainant. We may then either obtain their agreement to keeping these sections in the draft report or redact them (in order to still be able to share the draft simultaneously).

8.17 In some cases it may be inappropriate to share the entire draft report with every person involved. In these circumstances, the relevant portions of the report should be sent to the individuals concerned. For example, if a report criticises both a GP and a hospital consultant and it is not necessary for them to see the entire report to understand our findings and recommendations relating to them as individuals. In those circumstances we should consider excluding the criticism of the other individual from the decision being shared with each named person, until they have both had an opportunity to comment and/or provide further evidence.

Sharing not upheld draft reports with organisations

8.18 We do not have to share not upheld draft reports with organisations if we have reached a specific agreement with them that they do not want to be notified of the draft in these cases. However we should have written confirmation from the organisation of this agreement which should be referenced on MSD on all relevant cases. The organisation should also have been reminded of this at the proposal to investigate stage and given the

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opportunity to say if they did want to see the report in the particular case (see paragraph 3.35). **(Policy requirements).**

Sharing sequentially

8.19 Draft reports should be shared simultaneously in all cases: this includes cases where we are making critical findings about organisations or individuals and proposing remedies. Only in exceptional circumstances should we share sequentially, with the reasons for any such decision agreed with a line manager and accurately recorded.

Sharing with third parties

8.20 If third parties have provided information or been referred to in other evidence that we are going to include in our draft decision (for example, other family members, Social Services employees, banks or building societies) then we must consider if it is necessary to check with them that we have the facts correct. We would probably only share the relevant sections of any report. The Investigator should contact the complainant first if they are going to contact someone known to them.

Advocates/Representatives

8.21 Draft decisions can also be shared with advocates or other representatives, providing we have appropriate authorisation from the complainant for them to act on their behalf.

Granting an extension and failure to respond

8.22 We expect parties to the investigation to respond to draft decisions within a reasonable timescale and to contact us promptly if they are unable to meet the deadline.

8.23 We should only grant an extension to the deadline for comments if there are valid reasons to do so, otherwise no extension should be given. Reasons for an extension should be accurately recorded. Valid reasons could include if a complainant has been away from home or unwell or if we are satisfied that an organisation is making genuine efforts to respond fully. We should also carefully consider whether we need to make any reasonable adjustments for a complainant which may include giving them longer than two weeks to comment on the draft report, depending on, for example, their disability.

8.24 We should also take into account when the extension was requested (for example, if we are notified quickly of any delay, rather than a 'last minute' request). If no comments are received, and we have been through the communication steps set out above, then we should proceed with finalising the report.

- 8.25 We should not issue a final report on the day that responses are due to be received back. Wait at least until the following day and check to see if correspondence has been received. In those circumstances, where no comments are received, we will proceed to the next stage without them.
- 8.26 On the rare occasion where we are unable to contact the complainant before the draft report is sent out and we do not receive any communication from them during the period for comments, then the matter should be escalated to a manager to discuss how to proceed. We should not just go ahead and issue the final report without first discussing the case with a manager.
- 8.27 At the point at which the Investigator has received comments from both the complainant and organisation, Milestone 6 on MSD ('Receipt of draft report comments') should be recorded as completed (**Policy requirement**).

Information requests and material evidence

- 8.28 The issuing of a draft decision may sometimes prompt an information request for the material evidence we have relied upon to reach our decision. We define material evidence as *'the evidence we have considered that we have either relied upon or has influenced our assessment/investigation'*.
- 8.29 The Investigator should include all information which influenced our decision, not just that which supports the final decision that we took. This evidence should be described in our analysis and reports and also be identified on the case file and MSD (**Policy requirement**). Where it is practical we should also identify on MSD the evidence we have seen but not relied on. However, it may not be proportionate to do this on cases where there are a very large number of documents for example.
- 8.30 If a request is received for information, this should always be considered by the Investigator (**Policy requirement**). The Investigator should decide what that information is and (usually) provide it. A response should always be provided to the request, even if that response is to say that we are not able to release the information and the reasons why (**Policy requirement**). If the request is at draft decision stage and the volume of papers given is large then the Investigator may, in the interest of fairness, need to extend the deadline for comments.
- 8.31 If an organisation asks to see material evidence (including clinical advice) during the investigation (for example, at the same time as receiving the draft report), we should consider the request and unless we have any concerns about the risk of sharing information, share the evidence in full.
- 8.32 Information requests can be made at any stage of the case, not just at the point that we share the draft decision and the above considerations should still be made whenever the request is made. If there is any concern about releasing any of the information (for example, due to its potential to cause harm or

because it contains third party information) then please contact the FOI/DP team for advice.

Considering the response

8.33 The Investigator must consider the comments received following the sharing of the draft decision and decide what impact those comments have on the decision. Be robust in the assessment of comments received on the draft. Remember that it is the Ombudsman's investigation and that we are independent. If a complainant or organisation in jurisdiction disagrees with elements of the report then we can reflect those views when we issue the final report (in a covering letter if necessary), even if we are not persuaded by them. We need to accurately record that we have considered the comments and carried out a proportionate analysis of the view we have taken on them:

- This note should contain enough information so that anyone coming new to the case could understand the view we took on the comments made on the draft decision and why.
- It is not enough to say simply that the comments have been considered and there is no basis to change the decision.
- The note must acknowledge (even if only in summary form) the key points made in response to the draft decision and any related analysis (that is, why we decided to make changes or not).
- In some cases the complainant may simply restate their complaint. If that happens and they have not provided any new evidence, new facts nor highlighted any inaccuracies or omissions then the analysis should say so clearly and give that as the reason for not changing the decision.

8.34 How analysis is recorded is a matter of personal preference. The key point is that the analysis is clearly and accurately recorded on the case (**Policy requirement**). This may mean recording it directly in the draft report or in a separate document. This will depend on individual working styles. An Investigation Summary Form is available as a support tool but its use is not mandatory.

8.35 Generally, we should not treat a complainant's challenge or unhappiness with our provisional findings as a complaint about us or as a reason for reallocating the case. The key reason for sharing our draft findings is to give the parties to the complaint the opportunity to comment on those provisional findings. However, if the Investigator is uncertain about whether comments in response to a draft report should be treated as a complaint then they should speak to their manager in the first instance and seek advice from the Customer Care Team if necessary.

Refusal to accept recommendations

8.36 Where an organisation or individual refuses to accept a recommendation for remedy made in a draft investigation decision, the following process should be followed:

- Review the organisation's response with an Investigation Manager, seek advice if necessary and decide if we are going to maintain the findings and recommendations in the report.
- If the findings and recommendations are not maintained, then the Investigation Manager should arrange for a review and reissue of the draft report.
- If the findings and recommendations are maintained, the case risk should be reviewed. We should consider what risk may occur if we close the case without agreement. We should consider appropriate action including preparing or updating the mitigation plan and notifying the Director of Operational Delivery if the case becomes high risk.
- The case should be escalated for discussion at Assistant Director level, ideally at their weekly meeting.
- Once the decision on how to proceed has been made this should be documented. We should record what action we are going to take: specifically, what we will do before the case is closed (That is, how much time we should expend on discussion with the organisation etc.) at case closure and after case closure.

Challenge to findings of serious clinical fault

8.37 Where we have made serious findings of clinical fault we may receive challenge from organisations that such findings are out of our remit. Our position is that we are entitled to do this and to form a view about what action is required to remedy the injustice arising from the maladministration or service failure we have identified. Any challenge to our jurisdiction should be escalated immediately for advice, including involving the Legal Team where necessary.

Sharing evidence obtained after draft report is shared

8.38 Following receipt of comments on the draft, we may decide to obtain further evidence or request further expert advice in order to address the comments received. In cases where the new evidence/advice is not material, does not disclose any new issues and we do not intend to rely on it, then we do not have to disclose this further information to the parties to the complaint.

Further draft reports

8.39 In circumstances where the comments on a draft decision result in further substantive investigation work being undertaken or significant changes to the decision, then we should re-share the draft report with all parties. Significant

changes could include changes to the overall outcome, changes to findings and changes to types and levels of remedies. Decisions to reshare should be taken on the individual circumstances of the case and discussed with line management in the first instance.

Risk

- 8.40 Review the case risk rating (in line with the risk section in the [Service Model General Guidance](#)) when the draft report is shared. **(Policy requirement)**
Please remember that risk assessment should include consideration of any conflicts of interest (both of the casework staff and of senior staff).

Complex Health Investigation Requirements

- 8.41 In complex cases we should share the agreed draft (or relevant sections) with any clinician who has provided advice to ensure that we have reflected their advice properly.

Section 9. Investigation: Communicating the final decision

The final report - What the law says

- 9.1 In parliamentary cases we must issue the final report to the referring MP, the ‘principal officer’ of the organisation complained about, to any person specifically complained about and (in Victims’ Code cases only) to the complainant **(Legal requirement)**⁵⁰. We send a separate copy of the final report to the complainant in all other cases as well **(Policy requirement)**, but this is not a legal requirement.
- 9.2 In health cases we must issue the final report to a list of people which changes depending upon the section under which the investigation has been conducted. However, in all cases a report must be sent to the complainant, the person or organisation specifically complained about, any other person specifically complained about and any MP who assisted in the making of the complaint **(Legal requirement)**⁵¹. We also have the power to share a health report with any other person we think appropriate. Such decisions will be taken on a case by case basis.

Naming clinical advisers and named persons

- 9.3 We will not usually name clinical advisers. This includes draft investigation reports, final investigation reports and decisions not to investigate.
- 9.4 We do not usually provide the names of named persons in straightforward, standard or complex cases. Instead we should refer to them by their professional title (such as Midwife or Registrar) or by an abbreviation (Mr B or Miss J).
- 9.5 Requests for the names of individual clinicians or a named person should be treated as request under information law and advice sought as appropriate from the Fol/DP team.
- 9.6 Any investigation report that refers to clinical advice must explain that the clinical advice is only one part of the evidence that has been considered in reaching our decision (all investigation reports should include reference to the material evidence we have relied upon). **(Policy requirement)**

Approving final reports

- 9.7 Final investigation reports should be approved in line with the levels set out in the [Delegation Scheme](#) **(Policy requirement)**. The need for escalation of a case above those levels should be determined by the individual circumstances of the case.

⁵⁰ 1967 Act, section 10(1)-(3)

⁵¹ 1993 Act, section 14(1)-(2)

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9.8A member of staff approving a final report should only do so having seen the draft report supported by any necessary separate analysis (for example, analysis of comments on the draft report).

Reports for the Ombudsman's signature

9.9 Reports relating to investigations of complaints referred by the Speaker of the House of Commons, the Chairman and Members of the Public Administration and Constitutional Affairs Committee, the Chairman of the Health Select Committee, the Chairman of the Public Accounts Committee and all party leaders must be signed by the Ombudsman, Chief Executive Officer & Deputy Ombudsman or Executive Director of Operations and Investigations & Deputy Ombudsman. **(Policy requirement)**.

9.10 In cases for the Ombudsman's signature, it is generally the case that the decision will be shared and all relevant feedback taken into account before sending the file to the Corporate Casework Team. However, there may be cases (for example, high risk cases) where the Ombudsman should be consulted or sighted at an earlier stage. Investigators should keep their managers, Assistant Directors and Directors sighted on any cases that are likely to require the Ombudsman's signature.

9.11 The case file, with appropriate final drafts (of both the report and covering letters) for the Ombudsman's signature, should be referred via line management and sent to the Corporate Casework Team. Any queries regarding cases to be signed by the Ombudsman should be directed to the Corporate Casework Team.

Process for issuing reports

9.12 The final investigation report should be issued simultaneously to all the parties to the complaint **(Policy requirement)**. Reports will be sent to all parties under a covering letter.

9.13 Templates for the final covering letters are available:

- [Cover letter for final report - to complainant](#)
- [Covering letter for final report - to named organisation](#)
- [Covering letter for final report - to MP or Professional Representative](#)

9.14 In all cases where the complainant has been represented by an advocate or other professional representative we should (providing we have written authorisation from the complainant for the representative to act on their behalf or to receive copies of all correspondence) also send them a copy of the final report. The parties to the complaint should be sent a hard copy of the signed report.

Additional requirements: parliamentary cases

9.15 The signed report is sent to **(Legal requirements)**:

- The referring MP.⁵²
- The complainant.
- The Permanent Secretary/Chief Executive of the organisation in jurisdiction⁵³ (It is also our policy to copy the report to any focal point or complaints lead with whom we had been dealing during the investigation).
- Any person specifically complained about.⁵⁴

9.16 A signed copy of the final report should also be retained on the physical case file. **(Policy requirement)**

Additional requirements: health cases

9.17 The signed report is sent to **(Legal requirements)**:

- Any MP involved.⁵⁵
- The complainant.⁵⁶
- The organisation complained about.⁵⁷ (Addressing the report to the person to whom we addressed the original letter seeking comments on the proposed investigation: normally a Chief Executive but copying to other parties as appropriate). In family health service provider cases we should write direct to that organisation (for example, a GP practice). Where an independent provider is to be investigated, we should write to the Chief Executive (or equivalent) of the provider.
- The relevant commissioning organisation (where the law requires us to do so or there is another specific reason to do so).
 - We are required by law to send reports to CCGs and to NHS England when they have commissioned the service complained about from an independent provider or a family health service provider. The law does not require us to do so when a CCG or NHS England have commissioned the service from a health body (for example, a Trust).
 - Reports sent to commissioners should be an anonymised version of the final report (which does not identify the complainant or, generally, any other individual).
 - In a case which involves multiple CCGs we can consider identifying the single most appropriate CCG to share the

⁵² 1967 Act, section 10 (1)

⁵³ 1967 Act, section 10 (2)

⁵⁴ *ibid*

⁵⁵ 1993 Act, section 14(1)- (2)

⁵⁶ *ibid*

⁵⁷ *ibid*

report with (for example, the 'home' CCG where the patient lives).

- Any person specifically complained about.⁵⁸ (Note: if a complaint is made against a family health service provider who is a sole practitioner then we should send only one copy of the report, but, in the covering letter, should explain that this meets the statutory requirement to notify both the provider and the 'person specifically named in the complaint'. In all other cases, (for example, where a Practice has more than one Practitioner) the final report should be sent to both the organisation/provider and the person specifically named in the complaint.)

9.18 Annex E sets out the recipients of health reports in a table.

9.19 A signed copy of the final report should also be retained on the case file.
(Policy requirement)

9.20 We have a power⁵⁹ to share the report with other people we consider appropriate. Such decisions will be taken on a case by case basis. Where we do share a report with another party we need to consider whether any personal data in the report needs to be redacted from it in order to comply with the requirements of the Data Protection Act **(Legal requirement)**. A common redaction would be to anonymise the report so that the complainant cannot be identified. If the Investigator is unsure about how to proceed in dealing with such issues then they should discuss with their line manager and, where necessary, seek further advice from the FOI/DP team.

Adding dates to final reports

9.21 The Investigator should ensure that the final report itself contains the date it is issued to the parties. **(Policy requirement)**

Sending reports to responsible officers in complaints about named doctors

9.22 Where we uphold or partly uphold a complaint against a named doctor we should send the final report to that doctor's responsible officer⁶⁰ **(Policy requirement)**. The purpose of sending the report to the responsible officer is to make them aware of the finding about the doctor so that they can consider it as part of their ongoing appraisal of the doctor and as part of the revalidation process.

⁵⁸ *ibid*

⁵⁹ *ibid*

⁶⁰ A responsible officer's role is (broadly) to ensure that doctors are regularly appraised and where there are concerns about a doctor's fitness to practise they are investigated and, where appropriate, referred to the General Medical Council (GMC). Each doctor will have a responsible officer who will make a recommendation to the GMC (normally every 5 years) as to whether that doctor's license to practice should be revalidated.

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9.23 Our normal approach is to send an anonymised report in these circumstances, unless there is good reason not to do so. If we decide not to do so then the reasons should be recorded on MSD. Reasons for not sending a report could include:

- Where the overall complaint has been upheld or partly upheld but the service failures lie with another individual (or organisation).
- If the doctor has retired since the events complained about and/or has been removed from the General Medical Council's List of Registered Medical Practitioners.

9.24 In most circumstance, we will be sending reports to responsible officers using our powers under Section 14 of the Health Service Commissioners Act 1993. Although in some cases, responsible officers may be recipients of reports or other information if we are making a disclosure in the interests of the health and safety of patients.

9.25 A final report should be sent to a responsible officer under a brief covering letter.

NHS Improvement

9.26 From 1 April 2016, NHS Improvement was created as an umbrella organisation for overseeing foundation trusts and NHS trusts, as well as independent providers that provide NHS-funded care. Monitor and the Trust Development Authority (TDA) now fall under NHS Improvement.

9.27 NHS Improvement is not a legal entity and, therefore, not an organisation directly in our jurisdiction. Monitor and the TDA are still separate organisations with separate legal entities and are still in our jurisdiction. We should refer to Monitor and the TDA by their umbrella name - NHS Improvement.

Health reports with a systemic remedy

9.28 In those health investigation cases where we have made a recommendation for a systemic remedy (that is, the organisation should take action to prevent a recurrence), we should tell the organisation (when we write to them with the final report) that they need to send a copy of the investigation report to the relevant regulator.

9.29 If we have recommended that the organisation sets out their actions to prevent recurrence (this is usually in the form of an action plan) then we should tell the organisation to send a copy of our final report to the regulator at the same time as they send them details of their actions. The wording we should use when telling organisations is: *'At the point at which you [the organisation] are ready to send your action plan to [the regulator], you should also include a copy of our final report, sent to you on [date]. When sending our final report*

and action plan to [the regulator], you should bear in mind your own Data Protection Responsibilities. We suggest you anonymise our final report’.

9.30 The relevant regulators are:

- Care Quality Commission (CQC) (for Family Health Service Providers, Foundation and Non-Foundation Trusts and Independent Providers)
- NHS Improvement:
 - Monitor (if the NHS organisation is a foundation trust).
 - NHS TDA (if the NHS organisation is a non-foundation trust).

9.31 When telling organisations to send reports and action plans to the CQC we should tell the organisations to send final reports and action plans to HSCA_Compliance@cqc.org.uk. Those contacting NHS Improvement should use: enquiries@improvement.nhs.uk.

Closing the investigation

9.32 When closing the investigation we should record the outcome of the investigation on MSD and then record whether the complaint was fully, partly or not upheld. A full list of investigation closure codes is available on MSD.

9.33 Where we have found that an unremedied injustice arose in consequence of maladministration or service failure then a complaint will be upheld (fully or partly as applicable). **(Policy requirement)** A decision about whether one of these cases is fully or partly upheld should be based on the circumstances of the case but a decision to partly uphold a complaint will normally result from a multi-strand complaint where we have only upheld some parts or a case where we found a lesser injustice than that claimed.

9.34 We will uphold (or partly uphold) complaints if our final report finds that the injustice was remedied after the complaint was received by us but either before the start of, or during, an investigation. **(Policy requirement)**

9.35 Where we have found that an injustice arose in consequence of maladministration or service failure but that it was fully remedied before the complaint was received by the Ombudsman then a complaint will not be upheld. **(Policy requirement)**

9.36 If we find that there was maladministration or service failure but that an injustice did not flow from it, then the complaint will be partly upheld. In some cases we may decide that, even though we have identified potential failings, the organisation should review the complaint and consider how it might be resolved. **(Policy requirement)**. Similarly, we may decide that for cases where we have found service failure or maladministration but no (or no unremedied) injustice, it is still appropriate to make recommendations to avoid a recurrence.

9.37 If the complaint has not been upheld then the case can be closed on the day the final report is issued. If we have not upheld the complaint then we cannot normally make any recommendations. Once the final report is issued the case should be closed. **(Policy requirement)**

9.38 Any recommendations contained in the final report will need to be recorded on MSD as being in compliance. It is a requirement to add at least one compliance item to MSD on any fully or partly upheld complaint **(Policy requirement)**. Once relevant compliance items have been added then the partly/fully upheld case can be closed on the day the final report is issued.

Milestones

9.39 At the point at which the Investigator sends the final report to the complainant and organisation, milestone 7 on MSD ('Final report issued') should be recorded as completed. **(Policy requirement)**.

9.40 Milestone 7 will not unlock on MSD until a decision is recorded for each complaint part and organisation added to the case.

DPA/FOI requests

9.41 DPA and FOI requests must be responded to in a specific way and in accordance with strict timeframes. If we are asked for information about a case under FOI or DPA and we are not able to release that information under FOI or DPA, we may still be able to release the information or some of it under our own legislation. In that case, we still need to provide the person requesting the information with an official response in accordance with the relevant timeframes under FOI or DPA, even if that response is simply to say that we are not able to release the information under FOI or DPA, but we will be able to release some/all of it under our own Acts. **(Legal requirements)**

Cases where legal action is suggested

9.42 Any correspondence received which suggests that legal action is or may be taken, should be sent to the Legal Team along with details of the case within 24 hours of receipt.

9.43 It may not be immediately obvious that the correspondence relates to legal action, however some wording to look out for is:

- 'Judicial review.'
- 'Pre-action threat.'
- 'Pre-action protocol.'
- 'Letter before action.'
- 'Letter before claim.'
- 'Claim' or 'small claim.'

- Reference to ‘legal proceedings’ ‘seeking ‘damages’ and/or asking for responses ‘within 14 days’ (this last example does not necessarily always indicate someone is looking to take legal action but under the pre-action protocol we are obliged to respond to legal threats within 14 days generally - sometimes 21 days).
- References to defendant/claimants.
- Additionally if someone has suggested we have acted ‘unlawfully’, ‘irrationally’ or ‘unfairly’ those could be grounds for JR.

Statements on cases over 12 months old

9.44 The Health Service Commissioner for England (Complaint Handling) Act requires us (since 26 May 2015) to send a statement of reasons to any person whose investigation has not been concluded within 12 months of receipt. We have decided to issue statements of reasons on all cases (not just investigations) that go over 12 months. This includes parliamentary cases as well as health. The default position is that all cases require a statement once open with PHSO for 12 months.

9.45 When a case is approaching 11 months old since case creation (unless certain that it will be concluded before the 12 months anniversary), the following action should be taken:

- Identify the key factors that have contributed to the age of the case.
-
- Create a document on MSD highlighting any reasons you consider are relevant in why the case has become old. For example:
 - The length of time it took for the case to be allocated
 - The complexity of the case
 - Any issues or delays we have experienced with the organisation, complainant or aggrieved
 - Any issues or delays we have experienced in dealing with third parties for example; getting evidence from an organisation we are not investigating
 - The need for specialised clinical advice and a delay in being able to find a suitable person to provide it.
-
- Draft a letter to the complainant containing a statement which explains why the case has not yet been closed, and the actions being taken to progress it. Follow the format in the template letters available ([Health QF - 12 month statement letter template \(Health\) - 20150629](#) or [Parliamentary QF - 12 month statement letter template \(Parliamentary\) - 20150630](#)), and entitle the history item: ‘12 month statement of reasons’ so that they are easily identifiable. Examples of [suggested wordings](#) are available.
 - The letter should be emailed to an Investigation Manager to review before it is sent out.

- Telephone the complainant to let them know why they will be receiving this letter.
- Once the letter has been approved, the caseworker (or escalated where this is consistent with the most recent communication on the case) should send the letter out shortly before or on the 12 month anniversary (and no later than one working day after). The letter should be sent to the complainant and any MP involved.
- If a statement is not issued by a case's 12 month anniversary, then it should be sent as soon as possible after that date. If a case is closed at over 12 months old, without a statement having been sent, then one should be issued as soon as possible.
- (NB: In future, cases 're-opened' following a Review will have a new case reference, and a new 12 month period will begin.)

Compliance

Actions taken during an investigation

9.46 The compliance process takes place after a case is closed (final investigation report issued). However, the actions taken in the late stages of an investigation are important in helping to achieve compliance:

- Recommendations must be relevant to the injustice found.
- Recommendations are to put right injustice.
- We should not make recommendations in not upheld cases.
- Recommendations should be SMART.
- Proposed recommendations being shared with the parties as part of the process for sharing the draft decision.
- The recommendations being understood by the parties.
- Considering fully any comments made on the draft report.
- Ensuring that the organisation or individual being asked to comply with the recommendation understands and accepts:
 - the remedy we are asking them to provide;
 - what action we expect them to take to comply; and
 - the date by which they need to comply.
- Recommendations clearly recorded on the case management system.

Compliance process - main roles and responsibilities

9.47 The following staff will normally be involved in the compliance process:

- **Business Support Officers (BSOs)** - Manage day-to-day compliance on the majority of compliance cases. Provide support activities when cases are escalated (for example, drafting letters for Investigator signature.)

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- **Investigators.** Assess whether compliance has been achieved and communicate the outcomes of completed compliance to the parties. Responsible for accurate and descriptive input of compliance plans on the Case Management System.
- **Investigation Managers, Assistant Directors and Directors.** Become involved in individual compliance cases as part of the escalation process. For example, where compliance is delayed or an organisation refuses to comply.
- **Compliance Officer.** Advice on the compliance process and individual cases. Owning a small caseload of, for example, high risk or complex compliance cases.
- **Outcomes and Compliance Caseworker.** Management of Compliance Officer. Advice on compliance process and oversight of compliance reporting.

Compliance process

9.48 Once a reply is received (from the organisation/individual), the Investigator should consider whether compliance has been achieved.

9.49 If the Investigator is satisfied that compliance has been achieved, then this should be communicated to the complainant and the relevant organisation to explain that our action is complete. Communication can be made by letter, email or phone; however, if the parties request confirmation by letter we should adhere to their request. Investigators can also delegate the drafting of letters to BSOs, however, the Investigator should still sign out the letter and has overall responsibility for ensuring the parties are told that compliance has been achieved.

9.50 However the Investigator communicates with the parties, they should ensure that there is an accurate record on MSD explaining that we have communicated completion of compliance to the parties and how. For telephone calls, we should accurately note the detail of the conversation. The Investigator should also ensure that MSD is updated with the compliance outcome.

9.51 If an organisation fails to comply in time or fails to comply satisfactorily (for example, sending a poor quality apology) then the escalation process set out below should be followed. The same escalation process applies for both delayed compliance and unsatisfactory compliance.

9.52 If the organisation has not complied by the target date then the BSO should actively chase a response and find out when the organisation will respond. The

initial default contact method is by phone, but it may be necessary to follow up by email. Our default contact point should be the focal point, liaison point, complaints department or equivalent (that is, the contact we have used during the investigation for enquiries etc.) rather than the head of the organisation. In the two-week period following the expiry of the target date, the BSO should make at least three attempts to contact the organisation: two failed phone contacts should be followed by at least one email contact.

- 9.53 If an organisation responds with a proposal for an alternative target date then the BSO should consider if it is reasonable. BSOs can agree a single extension of up to 4 weeks, if the organisation says they need more time to comply, and should then monitor compliance against the revised date. If the date is not considered reasonable then the case should continue to be monitored and progressed through the escalation process. Where we agree a change in target date we should inform the complainant of the revised date and the reason for the change.
- 9.54 If, at any point in the escalation process, we agree an amended target date and the organisation fails to meet it, then the case should continue to be escalated through the process. Agreeing an amended date does not send the case back to the start of the escalation process.
- 9.55 Where the escalation progress is used, the complainant should be kept updated regularly on progress. As a minimum they should be contacted: when escalation is started; when the escalation moves up a stage; of any revised target dates; and when our action is concluded. The caseworker is responsible for keeping the complainant updated.
- 9.56 If a case has multiple recommendations with different target dates, then this process should be used from the point at which the recommendation with the earliest date misses its target.

Escalation stage 1: Investigation Manager

- 9.57 If the organisation fails to comply (or to provide a reasonable timescale for a reply) within 4 weeks of the original (or, where appropriate, revised) target date then the case should be escalated to the Investigation Manager.
- 9.58 The Investigation Manager should then contact the organisation in order to agree what the organisation will do (and by when) to comply with the outstanding recommendations. The default contact method is by telephone, but it may be necessary to follow up by email. Our default contact point should be the focal point, liaison point, complaints department or equivalent (that is, the contact we have used during the investigation for enquiries etc.) rather than the head of the organisation.

- 9.59 Any written or email contact with the organisation at this stage should also be copied to the head of the organisation, or relevant senior staff member (for

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example, Medical Director or Director of Nursing) so that they are aware of the case.

Escalation stage 2: Assistant Director

9.60 If the organisation fails to comply (or to provide a reasonable timescale for complying) within 8 weeks of the original (or, where appropriate, revised) target date then the Investigation Manager should escalate the case to the Assistant Director.

9.61 The Assistant Director should then contact the organisation in order to agree what the organisation will do (and by when) to comply with the outstanding recommendations. The default contact method is telephone, but it may be necessary to follow up by email. The default contact point should be the relevant senior person at the organisation.

9.62 If the organisation continues to fail to comply (or to provide a reasonable timescale for complying) within 12 weeks of the original (or, where appropriate, revised) target date then the Assistant Director should review the case, and consider what action to take next. They should speak to the staff involved, if necessary.

9.63 Further action on the case should be decided based upon the specific circumstances of the case. The Assistant Director should set out a proposal for the next steps and pass the case onto the Chief Executive Officer and Deputy Ombudsman, the Executive Director of Operations and Investigations & Deputy Ombudsman or to the Ombudsman. The Assistant Director's review of the case and proposal should involve consideration about whether it is appropriate to lay a special report before Parliament.⁶¹

9.64 The Executive Director of Operations and Investigations & Deputy Ombudsman, Chief Executive Officer and Deputy Ombudsman or the Ombudsman should determine the next steps and send a letter to the Organisation/s detailing specific action we now intend to take. Other options for further action could include:

- Involving a regulator (for example, Care Quality Commission).
- Involving a professional body (for example, General Medical Council).
- Involving a commissioning body (for example, NHS England).
- Involving a parent department (for example, in cases involving executive agencies of Parliamentary jurisdiction organisations).

⁶¹ 1967 Act, Section 10(3); 1993 Act, Section 14(3)

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Adding a compliance item on MSD

- 9.65 If a recommendation has been recorded on the relevant MSD complaint part, a compliance item will automatically be created and can be viewed on the remedies and compliance tab.
- 9.66 The appropriate remedy type should be added along with a target date of when we expect the action to be completed by. If we are recommending financial redress then the amount should be recorded. **(Policy requirement)**
- 9.67 A description should also be added providing further detail about the action we are asking the organisation to take or an explanation to where this information can be found on the MSD record. A date should be added to when the case will require escalation. **(Policy requirement)**
- 9.68 Once compliance has been completed the remedies and compliance record should be closed. The compliance comments section should be used to record any difficulties we have had securing compliance or explain where this information is available on the MSD record. **(Policy requirement)**

Recording contact on MSD

- 9.69 We should record the most recent contact with the organisation (aimed at securing compliance) in the activities tab of the complaint part where the decision has been recorded. Staff should also record details of any response from the organisation, and/or any other relevant information about our progress in securing compliance **(Policy Requirement)**.

Recording contact on Visualfiles

- 9.70 We should record the most recent contact with the organisation (aimed at securing compliance) in the 'Last Action' field on the Visualfiles compliance screen. Staff should also record details of any response from the organisation, and/or any other relevant information about our progress in securing compliance **(Policy Requirement)**.
- 9.71 To access the 'Last Action' field, staff should change the 'Chaser Date' to the current date. This will then open up a 'Comments' dialogue box which can then be used to record the details of the relevant action or status change. Recording this information in the 'Last Action' field will enable managers to easily see what and when the last compliance action was for monitoring purposes.

Refusal to comply

- 9.72 The stepped escalation process set out above is intended to manage delayed (or unsatisfactory) compliance. If, at any stage, an organisation says that it will

not comply with a recommendation then the case should be escalated immediately to Assistant Director level.

Closing compliance

- 9.73 Compliance items should only normally be closed when we are satisfied that the organisation has provided, or taken all reasonable steps to provide, the remedy. Decisions to close compliance action, exceptionally, where compliance has not been achieved must be taken at Director level or above.

When the complainant does not cooperate or respond

- 9.74 Where we are satisfied that the organisation has made reasonable attempts to comply, but the complainant is not cooperating we should contact the complainant (ideally by phone) to find out why and to ensure they understand what is required of them. We should explain that the remedy cannot be secured unless they cooperate and ask them to do so by a specific date. (That date should be set, depending on the circumstances of the case - for example, what action is required and the information given by the complainant in response to this contact.) Details of that contact (if made by phone) should be confirmed in writing. We should explain that we may close compliance action without the remedy being secured, if they do not cooperate or provide an explanation of why they are unable to.
- 9.75 If the complainant does not cooperate by the date given, then we should contact them and give a final date by which they either need to cooperate or to explain why they are unable to do so, or we will consider closing compliance action without the remedy being secured and without further warning. We should also signpost them to the Customer Care team if they are dissatisfied with the outcome of the investigation.
- 9.76 In circumstances where we are unable to contact the complainant (that is, we get no response from them), we should attempt contact using different methods (for example, phone and letter/email) and also contact any representative.
- 9.77 If the complainant does not cooperate and no explanation or contact to the Customer Care Team to request a review is received by the date set, then the case should be passed to an Operations Assistant Director for them to approve the closure of compliance. The referral to the Assistant Director should summarise the action taken so far and the reasons for the proposed closure.
- 9.78 If the Assistant Director agrees the proposal then we should close compliance action as 'complied with', write to inform the complainant that we have done so and say that we will take no further action to secure the remedy. (Note: we record these as 'complied with' as the organisation has taken reasonable steps to comply. Recording a remedy as not complied with could reflect adversely on

the organisation involved, in circumstances where there is no actual failure on their part)

9.79 We should also write to the organisation saying that we are satisfied that they have taken reasonable steps to attempt to comply and that we will take no further action.

9.80 If the complainant provides an explanation we will consider that on its merits and decide whether to allow more time. However, we may need to ensure the complainant understands that we are unable to change the terms of a recommendation.

9.81 If a review is requested and is unsuccessful we should give the complainant a final date for them to cooperate and then follow the process as set out above.

Risk assessment

9.82 Any case which enters the compliance escalation process should have its risk rating reviewed, and revised as necessary (in line with the risk section in the [Service Model General Guidance](#)). This should be kept under review until compliance action is completed. Responsibility for the risk assessment lies with the member of staff who is overseeing that part of the escalation process (Investigator, Investigation Manager, Assistant Director or Director).

Customer Care cases

9.83 If the Customer Care Team receives feedback that relates to our findings and/or recommendation/s and the compliance process is still ongoing, then we will need to consider whether to pursue compliance or not, in light of the feedback received. This decision should be taken by the case owners who have been involved in the compliance process (Investigator, Investigation Manager, Assistant Director or Director).

Legal considerations

9.84 The need to seek advice from the Legal Team should be taken on a case by case basis. However, in line our normal approach, any correspondence received which suggests that legal action is, or may be, taken should be sent to the Legal Team within 24 hours of receipt.

Compliance Officer: case ownership and case support

9.85 In some cases a decision may be taken to seek the support of, or to transfer ownership of a case to, the Compliance Officer. This will only be done exceptionally and in cases where a significant amount of additional, specialist work is required.

9.86 Any such transfer should be discussed and agreed between the relevant Assistant Directors.

9.87 This work may include:

- Monitoring case progress and facilitating regular discussions and progress reporting.
- Providing update reports on escalated cases.
- Researching and producing detailed chronology reports on cases.
- Providing advice and insight to Directors and other relevant staff involved with the case.

9.88 The Compliance Officer can be approached directly for advice on any compliance case (whether within the escalation procedure or not) and with general queries about compliance policy and process.

Dealing with complaints from MPs

9.89 If we receive course of business correspondence from an MP or their casework staff (for example a request for an update on the case), this should be dealt with by the person who receives the correspondence (e.g. BSO, caseworker, investigator).

9.90 If the MP or their casework staff send a complaint or express dissatisfaction to other casework staff, the caseworker or their manager should try to deal with the complaint in the first instance. If they can't deal with the issue, the complaint should be passed to the Customer Care team.

Annex A. Definition and explanation of out of remit categories

Actions abroad other than consular functions⁶² (parliamentary cases only)

We can only consider actions taken outside of the UK when they involve:

- Consular functions (that are not voluntary).
- The actions of officers within control zones.
- The actions of British sea-fishery officers.

We cannot consider any other actions taken outside of the UK, including those countries where the Queen has jurisdiction.

Administrative action taken on judicial authority⁶³ (parliamentary cases only)

We can investigate the administrative actions of administrative staff at courts and tribunals when they are appointed by an organisation in jurisdiction. We cannot consider any actions of those staff though if they were taken on the direction or authority (whether express or implied) of a judge or tribunal member. For example, if a Judge directed a member of their administrative staff to list a case to hear on a certain day.

Alternative legal remedy achieved⁶⁴

An alternative legal remedy is a remedy available to a complainant achievable through legal action. Our policy is that if the aggrieved has already resorted to a court or tribunal that did (or could have but didn't) provide the full remedy then this takes the complaint out of our remit.

This is different to our alternative legal remedy considerations where we decide if it is or was reasonable for an alternative legal remedy to have been pursued.

Body out of jurisdiction⁶⁵

When the organisation complained about is not one we can look at.

Under our parliamentary jurisdiction most of the organisations we can consider are listed under Schedule 2 of the 1967 Act. Government departments are listed, but not the agencies that sit underneath them. For example Jobcentre Plus is not listed under Schedule 2 but the Department for Work and Pensions is. We can also consider the administrative action of staff at relevant tribunal's listed under Schedule 4.

The types of health bodies and other health providers in jurisdiction are described in Section 2 of the 1993 Act. This includes family health service providers (such as GP's and dentists) and independent providers (such as care homes).

⁶² Schedule 3 Paragraph 2, 1967 Act

⁶³ Schedule 3, Paragraphs 6A, 6B and 12, 1967 Act

⁶⁴ Section 5(2), 1967 Act; section 4, 1993 Act

⁶⁵ Schedule 2, 1967 Act; sections 2, 2A and 2B 1993 Act

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Direct Payments for Healthcare (including Personal Budgets) mean that a variety of non-NHS providers of services purchased with Direct Payments will fall under our health remit.

We can look at complaints about private companies if they are undertaking an action under contract with an organisation in jurisdiction. We therefore should check whether this is the case before deciding not to investigate a complaint this way.

When a complaint falls outside of our remit we will provide appropriate help to complainants by providing details of complaint handlers who may be able to assist them.

Commencement/conduct of civil/criminal proceedings⁶⁶ (parliamentary cases only)

We are prevented from investigating the commencement or conduct of court proceedings (for example, a decision by an organisation in jurisdiction to use or not to use certain evidence in court). The decision whether (or not) to take proceedings is generally within remit as that is taken before proceedings are commenced (technically the decision to commence and the action of commencing are different and separate actions). Whether or not to investigate a decision to commence proceedings would therefore fall within our discretion.

Commercial/contractual matters⁶⁷

In parliamentary cases we are prevented from investigating matters relating to commercial transactions or contracts. Not all contracts are out of remit, only those commercial in nature, for example a government departments decision to award a cleaning contract.

In health cases the 1993 Act contains a similar restriction but it does allow investigation of matters relating to certain NHS contracts (for example, where a health trust has contracted out service provision to an independent provider).

Criminal investigation or national security⁶⁸ (parliamentary cases only)

These restrictions were intended to prevent us from investigating certain complaints about the investigation of serious crime or national security issues. This does not exclude us from investigating matters arising from the investigation of all criminal matters (for example, a department's handling of a benefit fraud investigation).

⁶⁶ Schedule 3, paragraph 6, 1967 Act

⁶⁷ Schedule 3, paragraph 9, 1967 Act; section 7(2), 1993 Act

⁶⁸ Schedule 3 paragraph 5, 1967 Act

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Exercise of judicial/legislative functions⁶⁹ (parliamentary cases only)

This category includes complaints about decisions made specifically about a member of the judiciary rather than the administrative staff at a department. For example if a Judge decided not to allow additional evidence to be heard during a court case this complaint would be out of remit.

It also incorporates any complaints about legislation itself, or policy at such a high level it was debated by parliament, such as a decision that higher rate tax should be paid over a certain income.

Complaints against the Pensions Ombudsman are covered by this aspect of the legislation.

Ineligible complainant⁷⁰

Complaints cannot be made by local authorities, certain public organisations and certain publicly funded organisations. This includes where the injustice alleged affects only an ineligible complainant (for example a parent governor on behalf of a school). Under the 1993 Act a public organisation may represent on behalf of an individual.

Under the 1967 Act complaints must generally relate to actions that took place while the aggrieved was resident in the UK, or while present in the UK, or relate to rights or obligations which accrued or arose in the UK.

An aggrieved non-UK citizen living abroad can't complain unless it relates to a right or obligation arising in the UK. However, UK citizens with the right of abode in the UK but living abroad, may complain about the exercise of consular functions abroad. Considerations about the suitability of any complainant (whether under the 1993 or 1967 Act) will form part of the Assessment process.

Out of remit - other

Used for cases closed for other reasons, this will rarely be used.

For example, if there is a complaint about maladministration, service failure or failure to provide a service but no claim of injustice flowing from the alleged fault. For example if a complaint is excessively broad and unhelpfully vague such as that a particular department is not doing a good job, then we cannot consider it. (Note, however that in these circumstances the injustice may be outrage).

Another example would be the decision not to award a member of military personnel with a medal. Medals are gifts that can only be bestowed by the Queen and this decision would therefore be out of our remit for a reason outside of the other codes.

⁶⁹Section 5(1), 1967 Act

⁷⁰Section 6, 1967 Act; section 9, 1993 Act

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Pre-1996 clinical matters⁷¹ (health cases only)

We are prevented from investigating complaints about clinical care and treatment prior to 1 April 1996. However, clinical matters prior to that date can be investigated if part of the same action took place on or after 1 April 1996.

Private healthcare (not NHS funded)⁷² (health cases only)

Our powers of investigation are largely limited to the actions of those providing NHS care and treatment. However, NHS care and treatment can extend to private healthcare providers carrying out functions or providing services on behalf of the NHS. In addition, private healthcare can also be provided in an NHS setting. It is also possible for healthcare provided to an individual to be a mix of NHS and private care.

It should not be assumed that healthcare provided in a private setting is out of remit nor that healthcare provided in an NHS setting is automatically within remit. The circumstances of the cases in which these types of issues arise are often unique to those particular cases, and it is therefore difficult to provide general advice about them.

Advice should be sought on individual cases from the Legal Team where appropriate. It may also be necessary to contact the organisation or provider in question or the complainant in order to establish exactly the circumstances in which the services complained about were being provided.

Public service personnel matters⁷³

We are prevented from investigating complaints in relation to public service personnel matters. This was intended to prevent public sector employees (including civil servants and health service employees) from pursuing grievances relating to their employment via us. However, NHS personnel can complain if their complaint arises from the investigation of care and treatment they have received themselves.

Three year rule⁷⁴ (health cases only)

We are prevented from investigating the actions of health providers (whether individuals or organisations) or independent providers (again whether individuals or organisations) providing an NHS service if the complaint is made more than three years after the last day on which the provider stopped being a provider. For example, we could not look at a complaint about a GP if it was made three years after their NHS contract to provide services was dissolved.

⁷¹ Health Service Commissioners Amendment Act 1996; Commencement Order SI 1996/970 Article 2

⁷² Sections 2 and 3, 1993 Act

⁷³ Schedule 3, paragraph 10, 1967 Act; section 7(1), 1993 Act

⁷⁴ Section 9(4A and B), 1993 Act

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Annex B. Self-referral of health complaints

1. Under Section 10 of the Health Service Commissioners Act 1993 a health organisation (not a GP, dentist etc.) can refer complaints directly to us, and request we investigate. The intention of this provision is to cover exceptional cases where an authority wishes to ensure that justice is seen to be done, or where it feels that it cannot properly investigate a complaint itself. Self-referrals cannot be made by a health organisation who receives a complaint about an NHS service provider (such as NHS England receiving a complaint about a GP or dentist).
 2. We normally see self-referrals as an alternative to the organisation investigating. This is because if a complaint has already been investigated we would expect the complainant to be signposted to us directly. The law does not say though that a self-referral can only be made if the organisation has not investigated. Therefore in exceptional circumstances we might accept a self-referral where an organisation has already investigated.
 3. It is rare for these referrals to be made, but if we receive contact from an organisation who wishes to self-refer a complaint, this should be logged on MSD by the Customer Service Officer as a contact, rather than a new case.
-
4. When adding a case to MSD that relates to a Section 10 referral, the premature tests can be overwritten by selecting the 'exception' option. The free text box below should then be used to record the words 's10 referral'.
-
5. The Customer Service Officer should then pass the referral to the Corporate Casework Team by emailing ++caseworkteam@ombudsman.org.uk (**Policy requirement**)
 6. The Corporate Casework Team should then consider whether the contact meets the criteria for being a Section 10 referral. Self-referral complaints must have been made to us in writing, by the person aggrieved or by a person authorised to complain on their behalf, and within one year from the aggrieved knowing about the issues complained about.⁷⁵ (**Legal requirement**) (This is subject to the usual time limit considerations.)
 7. The Corporate Casework Team will normally ask the organisation why they are self-referring the complaint and whether they have consent from the complainant to share information about the complaint. This is because our

⁷⁵ Section 10 (2 a, b & c)
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legislation requires the organisation to refer the complaint on behalf of the aggrieved. The organisation should have authorisation from the complainant to refer the matter to us.

8. Organisations wanting to make a self-referral to us must do so within 12 months of them receiving the complaint⁷⁶ (**Legal requirement**). We can consider referrals outside of the 12 months if we consider it appropriate.
9. We have discretion to decide if a self-referral is properly made⁷⁷. If a self-referral request is received then the Corporate Casework Team should consider whether it meets the criteria set out above. If it is unclear whether the organisation is making a self-referral we should clarify this with them. (**Policy requirement**)
10. Organisations should not see self-referrals as a way of passing complaints to us that they do not want to deal with, nor is a self-referral a way to end ongoing correspondence when Local Resolution has been completed. The types of cases which might be accepted include:
 - a. Where relations have seriously broken down between the organisation and the complainant to the extent that progress on the complaint is no longer possible.
 - b. Where the subject matter of the complaint is so serious (and possibly so widespread within the organisation) that it does not feel able to investigate it properly.
11. We would expect the organisation, when referring a complaint to us, to explain what they want us to investigate and why they are unable to consider the complaint, or complete their consideration (**Policy Requirement**).
12. The Corporate Casework Team will determine whether the referral meets the section 10 criteria. If it does not fit the criteria (this may be because we have already received a complaint from the complainant directly), the Corporate Casework Team will respond to the organisation to explain why the complaint cannot be self-referred. They may suggest that the organisation signpost the complainant to us if this hasn't already been done.
13. If the contact does fit the criteria, the Corporate Casework Team will prepare a briefing setting out the details of the referral and why it meets

⁷⁶ Section 10 (3)

⁷⁷ Section 10 (4)

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the section 10 requirements. The briefing is then passed to an appropriate officer with delegated authority to accept in principle.

14. Once approval is granted, the case is passed back to Intake and dealt with as normal under the Service Model. Once it has been agreed that a case meets the criteria for Section 10, there is no reason to treat it differently to any other case we receive. There is also no need to raise the risk rating on the case, just because it is a section 10 referral. Any request for a self-referral must be treated as a complaint and a decision made on whether or not to accept it for investigation.

Annex C. Categorising investigations and referrals to complex

Criteria for categorising Parliamentary investigations as complex (Category 3)

The Service Model sorts investigations in to three categories - straightforward, standard and complex. The designation of investigations should be based on the following requirements for the investigation:

- **Proportionality** - the depth of investigation that will need to take place in order to reach a conclusion for example, unpicking multiple heads of complaint with several organisations involved and events overlapping.
- **Activity** - the investigation will require prolonged intensive activity for example, having to conduct several interviews, multiple and specialist areas of advice required, very high volumes of evidence to review.
- **Resource** - conducting the investigation on a project team basis, heavy involvement of other areas of the office etc.

Please note that just because an investigation may take longer than 13 weeks doesn't lead to it being automatically considered as a complex. Complexity refers to the approach we would need to take in conducting the investigation.

A number of criteria are set out below to assist Parliamentary caseworkers in deciding if an investigation should be categorised as complex. **None are definitive in themselves and a case must be considered in the round - deciding that an investigation has one or more of these characteristics does not automatically mean it is complex.** We anticipate that this will mean only a small number of investigations are categorised as complex. An investigation can be re-categorised to complex at any point if new factors emerge during the course of our investigation.

These are working definitions that we will refine and develop as we embed the service model and review the learning from that.

Criteria

1) Proportionality considerations:

- Having to take oral statements from parties to understand events that took place.
- Interviews have to take place.
- Resource intensive. For example, may require more than one Investigator or very large volume of evidence to consider.
- Multiple, simultaneous and interwoven events that cannot be easily separated (not a series of linear events).
- Multiple organisations and/or multiple strands involved.
- Need for specialist advice

- Injustice which is complex - difficult to define, difficult to identify how the maladministration links to the injustice, difficult to calculate the impact of the injustice.

2) External Influences

- Risk - Cases assessed as high risk may require additional activity and resource in order to appropriately manage the risks.
- High profile - if the issue under investigation has a high external profile (for example, news coverage or politically sensitive) then the case may need additional work or input at an Executive level and from EA&S.
- Precedent case - there is the potential for a high number of similar investigations anticipated and therefore we may need to do more work to get the precedent agreed.
- Likely to lead to a published report - as per high profile.
- Part of a thematic/systemic issue - managed on a project basis and involve a number of investigations being progressed simultaneously.

3) What is not complex

Whilst there are a number of things that may make an investigation more complicated, and so increase the length of time taken to investigate, they do not make an investigation complex. These include:

- Lots of information/evidence to consider/technical subject area
- Serious or high impact alleged injustice
- Events complained about taking place over a long period of time
- Novel issues

Criteria for categorising Parliamentary investigations as straight forward (Category 1)

Below are a number of criteria to assist Parliamentary caseworkers in deciding if an investigation should be categorised as straightforward. None are definitive in themselves and a case must be considered in the round - deciding that an investigation is missing one or more of these characteristics does not automatically mean it is not a straightforward investigation. An investigation can be re-categorised at any point if new factors emerge during the course of our investigation.

1) External Influences

- Low Risk
- Low profile - for example, minimal public interest in the issues complained about and/or the MP who referred the complaint is not a member of PACAC or a Secretary of State.
- Stand-alone case - issues complained about are not related to any ongoing thematic issues currently under investigation.

- Precedent established - issues complained about fall under an area where a precedent is well established and accepted and we have a clear approach in place for handling such issues.

2) Proportionality considerations

- Majority of enquiries can be conducted by phone.
- No need for face to face interviews or external site visits.
- Low resource requirements (number of our staff that need to be involved, time taken to gather and review evidence etc.)
- Single issue, single body discrete event.
- Specialist advice is not required.
- Low impact alleged injustice.

Investigators can agree to categorise their investigation as straightforward with their Investigation Manager as part of the planning and scoping stage.

Criteria for health and parliamentary cases moving to complex investigation.

We have set out below a number of criteria to assist caseworkers in their decision making. None are definitive in themselves, but need to be considered in the round as early as practicable in the investigation with the view that cases should not be double worked if at all possible. It should definitely not be a case of 'tick three boxes, move it on'.

External influence:

- Risk - high risk cases more likely to be passed to complex investigations
- Precedent for body - high number of similar cases more likely to go to complex investigations
- High profile externally - more likely to be passed to complex investigations
- Likely to result in a published report - more likely to be passed to complex investigations
- Lead complaint where high volumes of similar cases are expected - more likely to be passed to complex investigations
- Case of interest / thematic - more likely to be passed to complex investigations
- Topic fits with strategic priorities - more likely to be passed to complex investigations

Impact on resources and length of investigation. (Note: number of organisations and volume in particular should not be seen as definitive but need to be viewed in the overall context of the complaint):

- Number of bodies
- Complexity
- Need for specialist or multiple advice
- Likely duration of investigation
- Length of care or episode complained about

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- Volume of evidence
- Need for interviews
- Does the complaint feature novel issues
- Severity of injustice
- Likelihood of resistance from body
- Possibility of joint working

Investigations are less likely to be categorised as complex where external influence criteria are classified as low and where cases are more straightforward. Cases where there are no indications of maladministration or service failure or where reasonable action has been taken to provide a remedy should not normally be passed on to complex investigations in the absence of other indicators.

In order to avoid double handling and potentially wasted resource, cases identified early as containing combinations of these and/or other factors may be moved to complex investigations without the requirement to each a level of consideration previously carried out under a further assessment.

Annex D. Investigation report template and checklist

| Section heading | Content | Explanation |
|-----------------|--|--|
| Summary | <ul style="list-style-type: none"> • Statement that this is our report of the investigation. • Concise summary of complaint investigated (and injustice claimed and outcome sought). • Complainant/aggrieved. • Organisation/individuals complained about. • Clear statement of the overall outcome for each organisation. | Where we have made findings say clearly if a complaint is upheld, partly upheld or not upheld. |
| Background | <p>Essential information to put the decision in context which could include:</p> <ul style="list-style-type: none"> • How we investigated the complaint. • Role of organisation complained about. • What we are basing our judgements on (e.g. law, policy, guidance, procedures, our Principles). • Background to the complaint. For example, the complainant's personal circumstances and events leading up to the complaint. • Key events. The overall story including the complaint to the body and their response. | <p>Case by case decision (can be woven into other parts of the report if appropriate):</p> <ul style="list-style-type: none"> • Only include information that contributes to an understanding of the decision and any recommendations. • Use annexes for information that is not key to understanding the complaint and the decision. • Use plain and clear sub-headings for different types of information. • Keep this as short and focused as possible. • Use the minimum necessary to justify the decision. |

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| Section heading | Content | Explanation |
|------------------------|---|---|
| Evidence we considered | Refer to or include the evidence that we have considered, including any advice, in reaching our decision. | Can be woven into other parts of the report. Where applicable: <ul style="list-style-type: none"> • Explain that advice is only part of the evidence considered. • Say how we have considered and balanced evidence from different sources (including conflicting evidence). |
| Evidence we considered | Acknowledge/summarise/respond to comments received on the draft decision. | Comments received should be considered and addressed as appropriate in the final report and/or covering letter. |
| What we found | Clear statement of whether there was a failing (did what happened differ from what should have happened) and be clear about what went right. | We must be clear why we have reached our findings, based on the available evidence and the test of balance of probability. |
| What we found | Clear statement of whether any failings were serious enough to be maladministration/service failure and, if so: <ul style="list-style-type: none"> • whether they led to an injustice, • whether it remained unremedied; and • what the injustice was. | Be clear about the links between any maladministration/service failure and injustice If appropriate, identify (and explain why) any claimed injustice did not flow from the failings identified. |
| Recommendations | Set out any recommendations or agreed actions (ensuring they are SMART) and how they link to unremedied injustice (including the basis for the recommendations/actions). | We make recommendations to remedy injustice (not failings) or prevent recurrence. |
| Conclusion | Conclusion giving the overall decision for each organisation. | |

| |
|--|
| Other points |
| Our approach is to use a formal 3 rd person formal report under a covering letter. |
| Paragraph and page numbers used in all reports. |
| It is not a requirement to use legal terms (for example maladministration, service failure) in reports but our internal analysis must be clear about these points and any alternative terms used in reports must be unambiguous. |
| Plain English sub-headings which say accurately what is in each section can be added as necessary. |
| Annexes, where used, should be in plain English and clear about purpose. |
| Draft reports should be marked clearly as such on every page using a watermark or footer. |
| Final reports should be signed and dated. |

Annex E. Where health reports and action plans should be sent

| Type of Case | If UPHELD / PARTLY UPHELD | If NOT UPHELD | Action Plans ⁷⁸ |
|---|---|---|--|
| GP/DENTIST (a.k.a. Family Health Service Provider) | <ul style="list-style-type: none"> Complainant/Representative^{*79} the Practice* any Named Person* ANON Report to Responsible Officer (if any Named Person is a doctor)⁸⁰ ANON Report to the Commissioning Body (e.g. CCG or Local Area Team via NHS England contact point)* Organisation/s to send a copy of the report to CQC (HSCA_Compliance@cqc.org.uk) only if we are making systemic recommendations. | <ul style="list-style-type: none"> Complainant / Representative* the Practice* any Named Person* ANON Report to Commissioning Body (e.g. CCG or Local Area Team via NHS England contact point)*. | <ul style="list-style-type: none"> Complainant Ombudsman Commissioning Body (e.g. CCG or Local Area Team via NHS England contact point) CQC (registered providers to send to HSCA_Compliance@cqc.org.uk) |
| Trust (Foundation) | <ul style="list-style-type: none"> Complainant / Representative* the Trust* any Named Person* ANON Report to Responsible Officer (if any Named Person is a doctor) Organisation/s to send a copy of the | <ul style="list-style-type: none"> Complainant/ Representative* the Trust* any Named Person* | <ul style="list-style-type: none"> Complainant Ombudsman CQC (registered providers to send to HSCA_Compliance@cqc.org.uk) |

⁷⁸ Drawn up and sent to these recipients by the organisation complained about.

⁷⁹ Only send to a representative if we have written authorisation from the complainant for the representative to act on their behalf or to receive copies of all correspondence.

⁸⁰ Where we uphold or partly uphold a complaint about a named doctor our normal approach is to send the final report to the Responsible Officer, unless there is good reason not to do so. We should anonymise the complainant's details in the report.

* It is a legal requirement to share the report with these parties.

| | <p>report to NHS Improvement (Monitor) only if we are making systemic recommendations. enquiries@improvement.nhs.uk</p> <ul style="list-style-type: none"> • Organisation/s to send a copy of the report to CQC HSCA_Compliance@cqc.org.uk only if we are making systemic recommendations. | | <ul style="list-style-type: none"> • Organisation/s to send to NHS Improvement (Monitor) at enquiries@improvement.nhs.uk |
|----------------------------------|---|--|---|
| Type of Case | If UPHELD / PARTLY UPHELD | If NOT UPHELD | Action Plans |
| Trust (Not / not yet Foundation) | <ul style="list-style-type: none"> • Complainant / Representative* • the Trust* • any Named Person* • ANON Report to Responsible Officer (if any Named Person is a doctor) • Organisation/s to send a copy of the report to NHS Improvement (Trust Development Authority) only if we are making systemic recommendations. enquiries@improvement.nhs.uk • Organisation/s to send a copy of the report to CQC HSCA_Compliance@cqc.org.uk only if we are making systemic recommendations. | <ul style="list-style-type: none"> • Complainant / Representative* • the Trust* • any Named Person* | <ul style="list-style-type: none"> • Complainant • Ombudsman • CQC (registered providers to send to HSCA_Compliance@cqc.org.uk) • Organisation/s to send to NHS Improvement (Trust Development Authority) at enquiries@improvement.nhs.uk |
| CCGs (inherited all the | <ul style="list-style-type: none"> • Complainant / Representative* • the CCG* • any Named Person* | <ul style="list-style-type: none"> • Complainant / Representative* • the CCG* | <ul style="list-style-type: none"> • Complainant • Ombudsman • Local Area Team via |

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| abolished PCTs and SHAs secondary care liabilities) | <ul style="list-style-type: none"> • ANON Report to Responsible Officer (if any Named Person is a doctor) • ANON Report Local Area Team via NHS England contact point | <ul style="list-style-type: none"> • any Named Person* • ANON Report (Local Area Team via NHS England contact point) | NHS England contact point |
|---|---|--|--|
| Type of Case | If UPHELD /PARTLY UPHELD | If NOT UPHELD | Action Plans |
| NHS England (inherited all abolished PCTs and SHAs primary care liabilities) | <ul style="list-style-type: none"> • Complainant / Representative* • NHS England* • any Named Person* • ANON Report to Responsible Officer (if any Named Person is a doctor) | <ul style="list-style-type: none"> • Complainant / Representative* • NHS England* • any Named Person* | <ul style="list-style-type: none"> • Complainant • Ombudsman |
| Independent Provider | <ul style="list-style-type: none"> • Complainant / Representative* • the Provider* • any Named Person* • ANON Report to Responsible Officer (if any Named Person is a doctor) • ANON Report to the Commissioning Body (e.g. CCG or NHS England)* • Organisation/s to send a copy of the report to CQC (HSCA_Compliance@cqc.org.uk) only if we are making systemic recommendations. | <ul style="list-style-type: none"> • Complainant / Representative* • the Provider* • any Named Person* • ANON Report to Commissioning Body (e.g. CCG or NHS England)* | <ul style="list-style-type: none"> • Complainant • Ombudsman • Commissioning Body • CQC (registered providers to send to HSCA_Compliance@cqc.org.uk) |

Annex F. Principles for the Provision of Clinical Advice

The role of Clinical Advice in Casework

Clinical advice is sought as part of the lay investigation where a specific clinical matter requires the knowledge and expertise of a clinical adviser to enable a caseworker to make a judgement in a case.

It is understood that clinical advice is not required in all cases, for example, those relating to funding or removal of patients from GP lists. Clinical advice in these circumstances is sought only where it cannot be expected that a caseworker has that knowledge, or is able to readily obtain and understand the information

A shared understanding of the role of clinical advice in casework enables an effective partnership between caseworkers and clinicians. That partnership seeks to create an environment where clinical advice is sought and provided appropriately and proportionately to address the needs of each individual case

Underpinning values and behaviours

- Caseworkers and clinicians work in partnership
- Caseworkers and clinicians understand and have respect for each other's distinct role whilst acknowledging the principles of equality and diversity
- Caseworkers and clinicians will communicate effectively along the pathway of a case, which includes the request for, and provision of clinical advice
- Problems are anticipated and addressed proactively in order to learn from casework and avoid delays

The Key Principles for the Provision of Clinical Advice

The Principles have been identified to support the following key areas:

- Making a clear, informed and proportionate request for Clinical Advice (the caseworker)
- Providing high quality, timely Clinical Advice (the clinician)

Key Principle 1 - Requesting Clinical advice

'A good request for Clinical Advice is defined by the scope of the complaint and is clearly understandable for the adviser, in which the questions are focussed and specific to address the clinical aspects of the complaint,

Features of Key Principle 1:

- A clear understanding and analysis of the evidence and scope of the complaint by the caseworker ensures that clinical advice is only requested on matters that require it.
- The investment of time to consider the need for, and type of advice, promotes timely and focussed clinical advice.
- Caseworkers seek opportunities for early discussion to inform appropriate requests for clinical advice for those cases that are not clear.
- Clear signposting is embedded within the questions posed by caseworkers
- Questions asked and documents provided are proportionate and relevant to the scope of the complaint and the type of advice requested
- Case files are prepared and presented with relevant, ordered and identifiable information
- Caseworker should request advice in discussion format unless explanations of complex issues or more in-depth analysis is required.
- Carefully considered initial questions reduces the need for further clinical advice at a later stage

Key Principle 2: Providing Clinical Advice

‘Clinical advice enables caseworkers to understand the clinical issues and helps them to make findings about clinical matters’

Features of Key Principle 2:

- Clinical advice is obtained from appropriately qualified and experienced healthcare professionals.
- Clinical advice - Written and Documented Discussion, meets the relevant Quality Assurance standards such that it is able to withstand challenge.
- Questions are answered in Plain English with clinical terms properly explained.
- Clinical advice is based on a clear understanding of the scope of the complaint and in response to the questions asked by the Caseworker.
- Clinical Advice is based on evidence reviewed and is referenced within the body of the advice to recognisable, time-appropriate guidance and standards
- Clear methodology and reasoning is outlined in all advice, in particular in the absence of guidance where established good practice is used as the standard

- Clinical advice is objective and unambiguous, with no emotive language or reference to purely personal practice and or individual opinion
- Clinical Advisers avoid addressing matters outside the scope of the complaint put to them.
- The significance of any clinical failings are described to enable the caseworker to make a judgement about a case

Implementation of the Clinical Advice Principles into practice

The Principles and underpinning values and behaviours are supported by a joint induction, core training and briefing programme, working in partnership with the L&D team and Operations Communication Plan

The Clinical Advice Directorate and Operations will work together to develop ways to disseminate and embed these Principles (that is, briefings/formal joint training and day to day support).

The Clinical Advice Directorate has produced guidance for External Advisers which can be viewed [here](#).

Annex G - Requesting Clinical Advice in the most suitable format

Context

One of the two main Principles for the Provision of Clinical Advice is that *‘A good request for Clinical Advice is defined by the scope of the complaint and is clearly understandable for the adviser, in which the questions are focussed and specific to address the clinical aspects of the complaint’*

A key feature of the Principle is that Caseworkers *‘should request advice in discussion format unless explanations of complex issues or more in-depth analysis is required’*

What does that mean in practice?

As the Caseworker, you are the most familiar with the complaint. Having an in-depth understanding of what is needed from clinical advice and using that to inform your questions will help you to decide which format is most appropriate for the individual case.

Decisions about the format for clinical advice must take account of the needs of colleagues with disabilities

The following notes should help you to judge whether clinical advice is more appropriately provided in discussion format. Use these pointers for each case rather than applying a ‘blanket’ approach, which may not be appropriate

Documented Discussion (DD) or Written advice?

| Question | Answer |
|--|---|
| <i>Does the number of questions affect the format?</i> | No - if the answers to the questions are straightforward (e.g. they do not require lengthy explanations of clinical judgements) then DD advice is fine. |
| <i>Does the extent of the records to read make a difference?</i> | No - the Adviser has time to prepare, but that doesn’t necessarily affect the detail in the answers. |
| <i>I need advice about a long period of care/explanation about complex clinical treatment or judgement</i> | Advice is probably better provided in written format where the period of care covers multiple hospital admissions or attendances. Where you are asking for an explanation of more complex matters where there is no guidance and you need a more detailed answer about clinically established good practice written advice might be more helpful, although sometimes a fact to face explanation may support you to understand the issues. |

| | |
|--|---|
| | Where more 'forensic' examination of the clinical records is required, or where detailed explanation and referencing to multiple clinical standards is asked for, written advice may be more appropriate. |
| <i>I am going on leave - is it better to request written advice?</i> | Not necessarily. You could consider asking a colleague or Business Support Officer to place the request on your behalf if the case is ready for submission before you go on leave. Then the DD can be ready for your return. It may be better to submit requests for those cases which do require written advice and therefore have a longer turnaround time. |
| <i>Advice may need to be sought externally - does that affect the format?</i> | Not necessarily - many of our Associate Advisers now provide telephone DD advice. If you think your case is most suited to a DD, submit your request and we will try to achieve that. |
| <i>Should I leave the decision to the Adviser as to which format is most suitable?</i> | Not in the first instance - you are the person most familiar with your case. An adviser may feel on reading the case, that a different format is more suitable. Do have that discussion with the Adviser to come to an agreement about the format between you. |
| <i>What about Follow-up Advice (additional advice from the same Adviser)?</i> | Where possible, the default format for further advice should be a DD. |

Where to go to for help

If you are unsure about the most appropriate format for the advice you need, please seek a discussion with your manager. In their absence a Lead Clinician (or more experienced colleague) will be able to help

Finally, a well organised and tagged case file will support the clinical adviser to identify the relevant records regardless of the format used.

Annex H - The provision of clinical advice by documented discussion (DD) - facilitating an effective session

Acknowledging that all complaints are different, a tailored approach to a case discussion (using consistent steps) will be based on the unique needs of the case

Preparing for a DD

Caseworker

- Consider who is best placed to provide advice
- Always seek advice from a Lead Clinician if in doubt prior to submission
- Prepare tabbed casefile and focussed questions so the Clinician is fully briefed and the outcome of the DD is clear

Clinician

- Ensure you have time to review questions and relevant records to enable an informed discussion
- Identify in advance of the discussion any guidance or standards to support your rationale and response
- Inform caseworker if missing records may affect your ability to advise



General points to remember

Preparation by both parties is particularly important for discussion advice in order to avoid misunderstanding and the need for subsequent advice

Ensure the DD starts and ends on time to support workload and availability of clinicians

Ensure the DD is free from interruptions

You may find it helpful to use the following '10 steps' as an aide-memoire for the DD

10 steps to an effective Documented Discussion

1. **Both:** Introductions and confirmation of the case to be discussed
2. **Clinician:** Confirm all relevant records present and reviewed
3. **Caseworker:** Briefly summarise clinical events and scope of the complaint
4. **Clinician:** Answer specific questions in turn
5. **Clinician:** Outline relevant Guidance and Standards or Established Good Practice
6. **Both:** Allow for thinking/recording time to ensure everyone has adequate opportunity to Reflect Understand Reiterate
7. **Caseworker:** Consider the need to pose a question in a different way and probe any unclear issues
8. **Both:** Stay on track
9. **Caseworker:** Summarise key points of advice and any outstanding issues
10. Agree and record advice write-up and timescale (default position is by Caseworker), but additional explanations/guidance may be inputted by the Clinician

NB: If the discussion indicates further advice from another specialism is required, please submit a new request to CAD



Annex I - Naming Conventions in Microsoft Dynamics

It is important that our documents are managed efficiently and effectively. In order to do this we need to name them so they are easy to find and accessible to staff across the organisation.

This guidance specifically covers how we should be naming documents in Microsoft Dynamics (MSD). The lists below have been separated into role types, and a general section that applies across many roles is available at the bottom.

Naming individuals

Where the naming convention refers to a role, for example 'complainant' or 'named organisation', the person or organisation's name should be used instead. For example 'Decision letter to Mr Jones' should be used instead of 'Decision letter to complainant'.

Referring to organisations

For organisations, an acronym can be used instead of a full title, for example, JCP instead of Jobcentre Plus. For a list of agreed acronyms for organisations in our jurisdiction, please see the following document: [Acronyms used in PHSO casework](#)

Recording notes of telephone calls

The majority of telephone call notes should be added directly onto either the activities tab or in the case summary box on the MSD record and there is no capacity for naming conventions to be applied in these instances. If a telephone call is recorded on a word document instead though, then the naming conventions for telephone notes listed below should be used.

Recording expert advice

Jurisdictional and legal advice should be requested through the relevant form on MSD. This request will then show on the activities tab of the MSD record. Once advice is received it will also be recorded directly on MSD. There are therefore no naming conventions for requesting or receiving this advice.

Clinical advice received via DD or as a written request will usually be recorded through the system and not submitted to CAST as a separate word document. Due to the way MSD works though surgeries or pop-overs will need to still be recorded using the clinical advice form. A naming convention is therefore available for this form still at assessment and investigation stage.

Full list of titles by casework team

Intake

General

Initial complaint from Complainant/Person Affected
Initial complaint from Representative

Documents

Acknowledgement to Complainant/Person Affected
Acknowledgement to Representative
Acknowledgement to MP
Requesting further information from Complainant/Person Affected
Requesting further information from Representative
Out of remit to Complainant/Person Affected
Out of remit to Representative
Out of remit to MP
Parliamentary not properly made to Complainant/Person Affected
Parliamentary not properly made to Representative
Parliamentary not properly made to MP
Health premature to Complainant/Person Affected
Health premature to Representative
Health premature to MP
Parliamentary premature to Complainant/Person Affected
Parliamentary premature to Representative
Parliamentary premature to MP

Joint working

JW transfer document
JW consent form
JW Intake letter to Complainant
JW Advice of Assessment form
JW Outcome of Assessment form

Assessment

General

Initial telephone call
Medical records
Case analysis
Case discussion
Update to complainant
Clinical advice request
Material Evidence
Referral to Customer Care

Documents

Case Assessment Checklist
Accept letter to Named Organisation
Accept letter to Responsible Organisation
Accept letter to Parliamentary Contractor
Accept letter to Second tier/Commissioner
Accept letter to Complainant/Person Affected
Decision letter to Complainant/Person Affected
Decision cover letter to Representative
Decision cover letter to MP

Joint working

JW Assessment letter to Complainant
JW Outcome of Assessment form

Allocations

Documents

First update to Named Organisation - no papers or comments
First update to Named Organisation - with papers and comments
First update to Complainant/Person Affected
First update to Representative
First update to MP
Second update to Complainant/Person Affected
Second update to Representative
Second update to Named Organisation
Second update to MP

Further updates to follow same template, e.g. Third update to Person Affected

Investigations

General

Initial telephone call
Case Discussion
Case Analysis
Case Review
Medical records
Referral to complex
Clinical advice request
Interview notes
Off-site interview risk form
Advice on remedy
Precedent Check
Update to complainant
Draft report approved (Note by the Investigation Manager of report approval)

Comments from Complainant/Person Affected/Representative/Organisation
Response to comments to Complainant/Representative/Organisation
Material Evidence
Referral to Customer Care

Documents

Introduction to Complainant/Person Affected
Introduction to Representative
Introduction to Named Organisation
Introduction to Named Person
Confirm Scope to Complainant/Person Affected
Confirm Scope to Representative
Confirm scope to Named Organisation
Confirm scope to Named Person
Investigation Plan
Transfer to complex
Complex Investigation Plan
Investigation Decision Support Tool Part 1
Investigation Decision Support Tool Part 2
Update to Complainant/Person Affected
Update to Representative
Update to Named Organisation
Update to Named Person
Decision letter to Complainant/Person Affected
Decision letter to Complainant/Person Affected
Cover letter to Representative
Cover letter to MP
Draft Investigation Report
Final Investigation Report
Draft report cover to Complainant/Person Affected
Draft report cover to Representative
Draft report cover to Named Organisation
Draft report cover to Named Person
Final report cover to Complainant/Person Affected
Final report cover to Representative
Final report cover to Named Organisation
Final report cover to Named Person
12 month statement to Complainant
12 month statement to Representative
Compliance letter - introduction letter to Named Person
Compliance letter - introduction letter to Named Organisation
Compliance letter - follow up letter to Named Organisation
Compliance letter - follow up letter to Named Person
Compliance letter - closing letter to Named Organisation
Compliance letter - closing letter to Named Person

Investigation - joint working

JW transfer document

JW consent form
JW outcome of Assessment form
JW closure form

Customer care

Acknowledgement to Complainant/Person affected
Feedback proposal
Feedback about us from Complainant/Person Affected
Feedback about us from Representative
Feedback about us from MP
Final decision letter to Complainant/Person Affected
Final decision cover letter to Representative
Final decision cover letter to MP

FOI/DP

FOI/DP request from Individual/Organisation
Request analysis

General

Letter/Email/Telephone call from Complainant/Person Affected
Letter/Email/Telephone call from Representative
Letter/Email/Telephone call from MP
Letter/Email/Telephone call from Named Organisation
Letter/Email/Telephone call from Named Person
Letter/Email/Telephone call from Second tier
Letter/Email/Telephone call to Complainant/Person Affected
Letter/Email/Telephone call to Representative
Letter/Email/Telephone call to MP
Letter/Email/Telephone call to Named Organisation
Letter/Email/Telephone call to Named Person
Letter/Email/Telephone call to Second tier