



Decision Notice

C-032: Jersey Doctors on Call (JDOC) Out of Hours GP Services

Exemption from Article 8(1) of the Competition (Jersey) Law 2005 prohibition on anti-competitive arrangements

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Jersey Competition Regulatory Authority

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Introduction

1. In 2006, the Jersey Competition Regulatory Authority (the **Authority**) originally granted an exemption to an arrangement concerning the provision of after-hours medical care to Jersey Doctors on Call (**JDOC**) under Article 9 of the *Competition (Jersey) Law 2005* (the **Law**). This has been renewed on a number of occasions since that date.
2. In February 2022, the Authority received an application on behalf of JDOC to extend the exemption for a further five years. The Authority registered receipt of the application on its website, inviting comments by 8 March 2022. No submissions were received during the consultation.
3. In response to the current request and in the absence of evidence or submissions to the contrary, the Authority concludes that the justifications that existed for the exemption still remain. This exemption is subject to full compliance by both JDOC and its members with certain conditions, which are intended to protect the interests of competition and consumers. The term of this exemption is **three years** from the date of this Decision.
4. The effect of the exemption is that the Authority cannot take any action regarding the arrangement during the period of the exemption. However the exemption will cease to have effect if a condition or obligation is breached.

JDOC

5. JDOC is an association of GP surgeries offering evening and overnight primary medical care in Jersey. After hours medical care or 'out-of-hours' medical care has been defined as care to patients being provided on weekday evenings and nights (i.e. 6.30 pm to 8 am) and during weekends, bank holidays and public holidays¹.
6. All Jersey GP practices are currently members of JDOC. Full details of the service can be found at: www.gov.je/Health/DoctorDentist/Doctors/pages/outhours.aspx.
7. Fees were originally set by taking an average of out-of-hours' charges when the association was first established in 2006. These fees were reviewed by the Authority at the time. Any increases have been by RPI, although not every year.

¹ See Report by the National Audit Office, *The Provision of Out-of-Hours Care in England*, Session 2005-6, para 1.1, page 9 (5 May 2006)

8. Prior to JDOC's formation, after-hours medical care in Jersey was delivered by general practitioners (GPs) who generally provide services to patients through a practice in co-operation with other GPs i.e. a GP surgery. Individual practices would either provide after-hours care themselves, or offer such services to their patients in cooperation with other practices.
9. This system changed with JDOCs introduction in April 2006. JDOC is an association of GP practices formed with the goal of providing after-hours medical care collectively. All GP Surgeries participate in JDOC but some surgeries continue to provide a limited out-of-hours service.
10. The first service that JDOC provides is an after-hours surgery located at the General Hospital in St Helier. JDOC provides this service seven days a week from 6 pm to 11 pm, as well as on Saturday afternoons and Sunday and bank holidays during the day.
11. The second service JDOC provides is 'house calls' – a GP visit to a patient's residence during the night, at weekends and on bank holidays and public holidays. This service is available between 6 pm and 8 am seven days a week, as well as between 12 noon and 6 pm on Saturday between 8 am and 6 pm on Sunday. The price for such a service varies depending on the time of the visit. Two GPs are on-call: one to provide over the phone advice and care, and the other to make house calls.

Charges at 10 January 2022

Consultation Type	Cost for Local Resident (with health card)	Cost for a visitor or seasonal worker
Clinic consultation with a GP	£64	£84
Visit by a GP to the patient's home between 8am and 11pm	£127	£147
Visit by a GP to the patient's home between 11pm and 8am	£157	£177
Telephone Advice	£20	£40

Requirement for an Individual Exemption

12. Article 8 of the Law states that an undertaking must not make an arrangement with one or more other undertakings that has the object or effect of hindering to an appreciable extent competition in the supply of goods or services within Jersey or any part of Jersey. Article 8(2)(a) states that this prohibition applies, in particular, to an arrangement that directly or indirectly fixes purchasing or

selling prices or any other trading conditions. Article 60 of the Law requires that, so far as possible, the Authority interprets these provisions consistently with the treatment of corresponding questions arising under competition law in the European Union.

13. The Authority has previously concluded that the JDOC arrangement is subject to Article 8(1) of the Law². This is based on the arrangement by JDOC's members to charge common prices for the provision of after-hours home visits (the **Agreement**), whereas prior to the creation of JDOC different prices in Jersey existed for these services, at the discretion of the individual GP surgeries. Such an arrangement may be characterised as a price-fixing agreement under Article 8, and the European Court of First Instance has stated that such restrictions may only be compatible with competition law if they satisfy the criteria for exemption³.

Previous Authority Decisions

14. The Authority has considered this exemption on a number of occasions in the past:

- 2006 Decision (C015/06) - <https://www.jcra.je/cases/2006/c01506-gp-coop-exemption-request/>
- 2007 Decision (C015/06.2) - <https://www.jcra.je/cases/2007/c01506-exemption-application-jersey-doctors-on-call-jdoc/>
- 2009 Decision (C015/06.3) - <https://www.jcra.je/cases/2009/c015063-jersey-doctors-on-call-gp-out-of-hours-service/>
- 2014 Decision (C1025J) - <https://www.jcra.je/cases/2014/c1025j-jersey-doctors-on-call-jdoc-exemption/>
- 2015 Decision (C1119J) - <https://www.jcra.je/cases/2015/c1119j-jersey-gp-and-out-of-hours-services/>
- 2016 Decision (C1197J) - <https://www.jcra.je/cases/2016/c1197j-jersey-gps-jdoc-out-of-hours-service-exemption-application/>
- 2017 Decision (C1302J) - <https://www.jcra.je/cases/2017/c1302j-jersey-doctors-on-call-jdoc/>

15. The Authority concluded at that time that it was satisfied that the arrangements were operating fairly and were not unnecessarily detrimental to the market for GP services. It therefore extended

² See Authority 2006 and 2007 Decisions. The 2006 Decision also established that the Law's definitions of 'undertakings' and an 'arrangement' were satisfied.

³ *European Night Services v Commission*, Cases T-374/94 etc [1998] ECR II – 3141. The 2006 Decision also established that JDOC has an appreciable effect on competition in Jersey.

the exemption granted under Article 9(1) of the Law until 17 June 2018, subject to the conditions set out in the decision document.

16. In particular the Exemption required that:

- (a) There was fair and non-discriminatory access to the services for patients and practices;
- (b) Overall, charges for the service shall broadly reflect the cost of providing the service;
- (c) JDOC will, on request, provide the Authority with the information it requires.

If there were significant changes to the arrangements for primary care in Jersey which affect GP services, or to the JDOC services, the Authority expected that JDOC would make a new application for exemption.

17. Due to an administrative oversight, no application was received to extend the exemption on its expiry in 2018 until the application made in 2022. No complaints have been received about the arrangements during the period when an exemption to the Law was not in place.

18. JDOC's structure has remained the same (i.e. GP's participating in JDOC still agree to charge a common price for after-hours home visits), and so the conclusions reached in the 2006 and subsequent Decisions remain the same i.e. the Agreement infringes Article 8(1) of the Law and so it is necessary to assess whether it meets the four criteria for an exemption under Article 9 of the Law.

Application for Exemption

19. To qualify for an exemption under Article 9, the Authority must be satisfied that JDOC meets all four of the criteria listed in Article 9(3):

- (a) is likely to improve the production or distribution of goods or services, or to promote technical or economic progress in the production or distribution of goods or services;
- (b) will allow consumers of those goods or services a fair share of any resulting benefit;
- (c) does not impose on the undertakings concerned terms that are not indispensable to the attainment of the objectives mentioned in sub-paragraphs (a) and (b); and
- (d) does not afford the undertakings concerned the ability to eliminate competition in respect of a substantial part of the goods or services in question.

20. . The Authority concluded in the previous Decisions that JDOC satisfied these four criteria. The Authority must therefore determine whether, based on the information that has been provided, JDOC still satisfies these criteria. The analysis is presented below.

A. Improvement in the Distribution of Goods or Services

21. The first criteria, Article 9(3)(a) requires that the JDOC arrangement either improves the production or distribution of goods or services, or promotes technical or economic progress in the production or distribution of goods or services. Simply stated, JDOC must be likely to produce either quantitative or qualitative efficiencies. Efficiencies may create additional value for consumers by lowering costs, improving the quality of a good or service provided, or by creating new goods or services.

22. The Application submits that the patient approval ratings have historically been very high, with surveys reporting 94% of patients rating the service as 'very satisfactory' and 98.1% rating the service as 'very satisfactory' or 'fairly satisfactory' which compares with a 2013 survey from NHS England and Ipsos Mori in which 67.5% described their overall experience of NHS out-of-hours GP services as 'good'.

23. JDOC put an end to the practice of every surgery having a doctor available every night to care for their patients. JDOC now gives doctors less night shifts to cover, making working in Jersey more attractive and improves the likelihood of attracting new GPs to Jersey.

24. It continues to maintain:

- Access to medicines out of hours
- Automatic defibrillator in the vehicle
- Single point of access with a single number to ring, day or night, facilitated by a VOIP telephone system, improving the transition and communication system
- Formalised procedures to deal with Clinical Complaints and Billing Disputes
- Communication of vulnerable patients
- Engagement with other out of hours service providers
- Formal governance and improved accountability processes

Recent Changes

25. There have been a number of changes to the scheme since the 2017 Decision, some as a result of the Coronavirus Pandemic.

26. GPs were contracted to help provide Primary Care to the Island during the first COVID wave, and the existing structure of JDOC was able to be quickly and easily modified to form part of the Urgent Treatment Centre. This service was based at the General Hospital and on the road, both 'in' and 'out' of hours. It enabled pressure to be kept off the secondary services in the hospital and also primary care in the community. This was as a result of strategic partnerships between JDOC and Primary Care, Secondary Care, Health and Government. These arrangements remain in place, with further developments in the following areas.
27. Overnight telephone call handling for JDOC is now provided by HCS 24 Care Hub, under the auspices of Health and Community Services (**HSC**), a 'one number' service where calls are triaged and callers transferred to the appropriate service.
28. Overnight nursing cover is provided by a team of highly experienced nurses, employed by Family Nursing and Home Care who help deal with matters overnight that do not need to be managed by a doctor. This ensures the right care is delivered by the most appropriate health care professional. Overnight nursing care is free of charge to patients.
29. JDOC retains a relationship with the Emergency Department, and is able to reduce waiting times in the Emergency Department (**ED**) by encouraging patients to head to JDOC if it is more appropriate for their medical condition.
30. Governance of JDOC is overseen by the Primary Care Governance Team (PCGT), a department of HSC. Also, as there is no longer a Community Pharmacy service on Christmas Day, the Health Department supports JDOC and arranges for an emergency supply of medications to be provided.
31. HSC continues to offer logistical support to JDOC. JDOC is based in the Gwyneth Huelin Wing of the Jersey General Hospital. HSC continues to provide receptionist support staff and a management team. JDOC and HSC share the cost of drivers, with the Ambulance Service providing a vehicle to be used during 'out of hours' operating times. This vehicle is used for other purposes during the working day. The Government Communications Unit hosts a page on gov.je about JDOC and its fees.

Communications

32. EMIS, the computer system used to log patient consultations, provides a shared care record which is used by various parties. It has been rolled out fully in JDOC and is used both on base and on the road. This allows JDOC to have full access to the patient's record, allowing safer more accurate care. It allows the patient's own GP to view notes made by JDOC.

33. Based on the evidence provided, the Authority has no grounds to conclude that the efficiencies are not being realised, or that overall patient satisfaction with JDOC's services has been anything less than very satisfactory. The Authority concludes that the first exemption criteria remains satisfied.

B. Allow Consumers a Fair Share of the Benefits

34. The second criteria, Article 9(3)(b), requires that consumers receive a fair share of the benefits arising from the arrangement. Consumers must be, on balance, better off as a result of the agreement.

35. JDOC has increased fees in line with Jersey RPI in January each year. This was previously approved by the Authority in order to ensure that JDOC prices did not become cheaper than GP practices. JDOC had no access to patient records/history at the time, and did not want to find itself a cheaper alternative to an individual's own GP, who was in a much better position to provide continuity of care, with a professional relationship with the patient.

Recent Changes

36. Eligible patients on low income are now invited to join the Health Assistance Scheme (**HAS**) which offers substantial subsidies for patients seeking primary care both in and out of hours. JDOC is therefore now accessible and affordable to groups who might previously be unable to access the care offered.

37. Historically, every GP surgery contributed to the running of JDOC including paying doctors' wages, increased bank holiday pay, loss of income the following day for doctors requiring a rest period after a night shift. In 2019, HCS agreed to cover the loss-making costs of running the overnight service and in January 2022 commenced payments to ensure that GPs are no longer required to cover the costs of running JDOC.

38. Telephone advice charging was introduced in 2020 as it was felt to be a fair way to remunerate doctors offering increased numbers of remote consultations to patients during JDOC operating hours. Remote consultations became more popular during the pandemic as it enabled a lower number of patients to physically attend JDOC. The improved relationship between community pharmacies and JDOC has enabled the provision of medications to remote patients if required.

39. Social security agreed in 2020 that the 'rebate' of £20 could be applied to remote consultations for as long as COVID remains a barrier to face-to-face consultations. This enabled JDOC to offer telephone consultations at £20.

40. The Authority notes the fact that prices can be cost justified, and requires that this condition remains in place during the term of the exemption.

C. Contains No Indispensable Restrictions to Competition

41. The third criteria, Article 9(3)(c), asks whether JDOC contains 'restrictions beyond those necessary for the attainment of the benefits that the parties demonstrate is likely to flow from the agreement'. The agreement should contain the least restrictive means of achieving its efficiencies.

42. The 2006 Decision concluded that the fixing of fees for evening and night home visits was necessary to achieve JDOC's potential efficiencies, and JDOC's terms have not changed since this time. The services is offered to the whole population of Jersey on fair and non-discriminatory terms. There are no grounds on which the Authority would conclude that the third criteria is no longer satisfied.

D. No Elimination of Competition in respect of a Substantial Part of the Goods or Services in Question

43. This criteria requires an assessments of the market effects that result from the Agreement. In the 2006 Decision, the Authority established that the proper relevant product market in which to analyse the effect of the Agreement was the provision of after-hours medical care. In addition, the proper relevant geographic market was Jersey.

44. As part of the application in 2007, the Authority undertook further analysis and noted that although the vast majority of GPs providing out-of-hours were members of JDOC, the fourth criteria remained satisfied because:

- One surgery continued to provide care until 8pm Monday-Thursday and 7pm Friday, charging a lower fee than JDOC
- GPs remain at liberty to leave JDOC if they wish, although no one had to date
- JDOC had not sought to increase the services it provided (i.e. into daytime care for example); and
- A&E remained open to patients for after-hours care and was attended by a significant number with non-urgent and primary care ailments.

45. Since 2017, the one remaining outlying GP surgery has joined JDOC, however a small number of surgeries continue to provide a limited amount of 'after 6pm' appointments. The fees charged remain lower than JDOC. In addition, evening and overnight nursing care has been established, with no charge incurred by patients been seen by nurses.

46. GPs continue to compete to provide high quality care, with previous analysis showing that quality of care is valued at least as much, if not more than, price. Patients remain free to change their GP based on the quality of service provided. GPs remain at liberty to leave JDOC should they feel that it is in their own or their patients best interest.
47. Finally, the ED at the General Hospital remains open to patients for after-hours care. A significant number of patients attend ED for non-emergency and primary care visits. Although this is not the best use of that resource, patients are not turned away and have a choice to be seen at the ED if they do not wish to engage with JDOC.
48. To ensure that this criteria remains satisfied for the term of this exemption, the existing conditions continue to be necessary:
- JDOC must notify the Authority prior to any changes in membership. This allows the Authority, if necessary, to assess the effects on competition of additional members and provides protection to JDOC from potentially making its exemption invalid by making additional arrangements with new members absent of approval under Article 9.
 - In addition, the Authority must ensure that JDOC does not create 'spill over' effects' that could substantially reduce competition in other markets in which GPs compete. Once such potential area of concern could be day services provided by GPs, and whether cooperation in night services has the risk of substantially reducing competition in day services. The potential concern in this regard is diminished by the fact that night services represent only a very small proportion of a GP's total business⁴.

Decision

49. The Authority concludes that the Agreement is subject to Article 8(1) of the Law.
50. The Authority also concludes that JDOC satisfies the criteria for exemption, subject to certain conditions. Specifically that the fees remain cost justified, to advise the Authority of any changes to membership, and to segregate members' daytime activities from the after-hours activities.
51. By this Decision, the Authority hereby grants an exemption to JDOC under Article 9, subject to the following conditions:
- (a) JDOC shall demonstrate to the Authority on request and to the Authority's satisfaction that any future increase in one or more of its fees is cost justified. JDOC shall submit for the

⁴ See 2006 Decision, noting the provision of after-hours medical care amounted to only around 2-5% of an average GP practice's total annual income

Authority's review full details of any proposed increase in fees at least 21 calendar days prior to such increase taking effect. Any such submission shall explain in detail how the proposed increase is cost-justified and provide sufficient data to the Authority to examine this justification.

- (b) Should, any time after receiving a notice under (a), the Authority instruct JDOC not to implement the increase, in whole or in part, JDOC shall not implement the increase to the extent it has been objected to by the Authority, except in accordance with the Authority's prior written consent.
- (c) JDOC shall not charge patients additional fees over and above those charged for consultation, unless and until such additional fees have been cost justified to the Authority's satisfaction, such satisfaction to be expressed by the Authority in writing to JDOC.
- (d) JDOC shall notify the Authority at least 21 calendar days in advance of accepting any new members. Should, any time after receiving such a notice, the Authority instruct JDOC not to proceed with the addition, in whole or in part, JDOC shall not proceed with it except in accordance with the Authority's prior written approval.
- (e) With the exception of the fees expressly subject to JDOC, each participating practice shall continue to set its own fees independently within its sole discretion.
- (f) JDOC and/or its members shall provide such information and documents as the Authority may reasonably require, subject to any legally recognised privilege and upon written request with reasonable notice, for the purpose of determining, monitoring or securing compliance with this Decision.

52. In accordance with Article 9(7) of the Law, the effective date of this exemption is 21 March 2022. This exemption shall terminate on 20 March 2025 unless otherwise terminated prior to this time. If towards the end of this period JDOC continues to satisfy the four criteria, it may, at its discretion, apply for an extension to the term of this exemption.

53. Compliance with the conditions in this Decision are binding on both JDOC and all GPs participating in JDOC, as well as on any of their assignees or successors.

21 March 2022

By Order of the JCRA Board