

# **Investigation Manual**

## Contents

<b>1. Introduction</b>	4
<b>2. Roles within the Investigation team</b>	4
2.1. Assistant Ombudsman	4
2.2. Investigators	4
2.3. Team Co-ordinators	4
<b>3. The link with Intake and Assessment</b>	5
<b>4. Inputs from Assessment</b>	5
<b>5. Allocations</b>	5
5.1. General allocation principles	5
5.2. Allocations during “business as usual”	6
5.3. Allocations in exceptional circumstances	7
<b>6. Record keeping and ECHO</b>	7
6.1. ECHO is the primary record	7
6.2. The DO NOT DISCLOSE virtual folder and redaction	9
6.3. Non-ECHO records	9
<b>7. The welfare of staff and inappropriate and disruptive behaviour</b>	9
<b>8. Safeguarding and complainant welfare</b>	10
<b>9. Reasonable adjustments</b>	10
<b>10. Consent</b>	10
<b>11. Joint working with the PHSO</b>	10
<b>12. Joint working with the Housing Ombudsman</b>	11
12.1. Cases passed through from Assessment	11
12.2. Cases passed to Investigation but where a joint element is later identified	11
12.3. Cases that are referred to LGO from the Housing Ombudsman	11
<b>13. Contact and the management of expectations</b>	11
13.1. Contact with complainants	11
13.2. Difficult telephone calls	12
13.3. Referring complaints upwards	12
13.4. Contact from MPs	13
13.5. Keeping in touch	13
<b>14. Openness and confidentiality</b>	13
14.1. Guiding principles	13
14.2. S.32(3) notices	14
<b>15. Covert recordings</b>	14
<b>16. Referrals for advice or further work</b>	14
16.1. Assistant Ombudsman, Executive Director and Ombudsman’s advice	15
16.2. Legal advice	15
16.3. Specialist External Advice	15
<b>17. Enquiries of the BinJ</b>	16
<b>18. Information from the BinJ</b>	16
<b>19. Enquiries to others</b>	17
<b>20. Fieldwork</b>	17
20.1. Examining files	17
20.2. Interviews	17
20.3. Meeting complainants and visiting sites	18
20.4. Round table discussions	18
<b>21. Jurisdiction and decision making</b>	19
<b>22. Withdrawn complaints</b>	19
<b>23. Draft decisions</b>	19
23.1. Timing	20
23.2. Contents	20
<b>24. Remedies</b>	20
<b>25. Delegation</b>	21
<b>26. Decisions and decision reasons</b>	21

<b>27. Reports and Adverse Findings Notices</b> .....	22
<b>28. Public value</b> .....	23
<b>29. Post decision reviews (PDRs) and service complaints (CAUs)</b> .....	23
29.1. PDRs (Post decision reviews: challenges to decisions).....	23
29.2. CAUs (Complaints about us: service complaints) .....	24
26.3 Dealing with requests to speak to a line manager .....	24
<b>30. Legal challenges</b> .....	25
30.1. Judicial Review .....	25
30.2. Allegations of us breaching the Human Rights Act 1998 .....	25
<b>31. Targets and performance</b> .....	26
31.1. Quality and Standards.....	26
31.2. Contact .....	26
31.3. Advice .....	26
31.4. Allocations and decisions .....	26
31.5. Challenges and service complaints .....	27
<b>Appendix 1: LGO Alerts</b> .....	28
A.1.1 What is an LGO Alert? .....	28
A.1.2 Possible Health and Safety Alerts .....	28
A.1.3 Home visits .....	30
A.1.4 Special Handling Alerts .....	30
A.1.5 Recording information in ECHO .....	30
<b>Appendix 2: Process of issuing an Adverse Findings Notice</b> .....	32
A.2.1 Warning Letter of Potential AFN .....	35
A.2.2 Example Anonymised AFN.....	36
A.2.3 Letter to Provider to Accompany AFN.....	38
A.2.4 Part 3A Local Government Act 1974.....	40
A.2.5 Example Revised AFN including Providers Comments.....	42

22 September 2016

## 1. Introduction

The Local Government Ombudsman is part of a wider system of public law and administrative justice which protects fundamental freedoms and human rights. Our complaint handling should contribute to public confidence in that system.

The objective of Investigation is to thoroughly and objectively consider every case referred from Assessment. We must make robust, timely decisions which we can publish and identify learning from cases of value to the wider public. Our full [mission statement, objectives and values](#) are on the website.

We provide a high degree of freedom for managers and staff. Investigators work with minimum levels of supervision and there is a high degree of discretion to decide how to deal with cases. But with this comes a clearer accountability. We expect high levels of performance in terms of both quality and quantity.

This guidance outlines investigative procedures which, if relevant, should be applied to all cases. It does not seek to say how we should investigate individual complaints or apply our jurisdiction to complaints. There is a separate Quality and Standards Manual [available to LGO staff on the intranet] which addresses expectations throughout our investigations, including the standards against which performance will be monitored, and how. The guidance should be considered in tandem. Other process guidance can be found on the [website](#).

## 2. Roles within the Investigation team

Generic job descriptions for all staff are available for LGO staff on the intranet. Broad functions within Investigation are:

### 2.1. Assistant Ombudsman

---

The Assistant Ombudsman is responsible for the effective management of the team to achieve its share of the 'basket of work' set out in the Business Plan. They will determine how work is allocated within the team, provide advice and assistance and ensure appropriate standards are met.

### 2.2. Investigators

---

Investigators are responsible for completing to appropriate standards the work allocated to them. Much of the work will be undertaking investigations, but they may also be expected to take part in public value work, training and other learning from investigations.

Investigators have the Ombudsman's delegated authority to decide complaints and must take ownership and responsibility for their actions in dealing with them.

### 2.3. Team Co-ordinators

---

The Team Co-ordinator's role is to provide administrative and organisational support to a team and assist in coordinating activity across the team. Precise activities will reflect the Assistant Ombudsman's priorities, but Team Co-ordinators will deal with cases not yet allocated to an Investigator, have a role in allocations, and will send the acknowledgement to the person affected (PA) and other standard letters. They will also act as a point of contact, undertake research to support the team's work and undertake administrative work for the team.

The Team Co-ordinator is not secretarial support for Investigators, but is a resource the team's members can call upon. Investigators are generally expected to be self servicing but, if resources are available, Team Co-ordinators can for example scan and record documents for Investigators.

### 3. The link with Intake and Assessment

We aim to provide a seamless link with Intake and Assessment and to minimise double handling by:

- Applying a common standard of contact (written or oral) with complainants of 20 working days from the receipt of the complaint by Intake.
- Accepting and applying Assessment's decisions to investigate complaints.
- "Feeding back, through your Assistant Ombudsman, any disagreement about a decision to investigate or other issues affecting the link between Assessment and Investigation"
- The periodic movement of staff between Assessment and Investigation to promote consistency and understanding.

### 4. Inputs from Assessment

Cases passed through to Investigation from Assessment will have a brief entry on ECHO in Notes and Analysis. It will not be a 'screening' note. It will explain:

- why they have decided the case needs to be investigated
- any urgency and if it has been identified for possible joint working
- any discretionary decisions which they have made (including if prematurity has not been checked), and
- whether an initial phone call has been made and, if so, any issues arising (including reasonable adjustments).

Once Assessment decides a complaint should be investigated, the expectation is that this should happen. Investigators do not have authority to overturn Assessment's decision

Cases closed in Assessment and then reopened on review will be received in Investigation as a normal complaint, rather than at post decision review.

The complaint category and subcategory should have been completed, but Investigators should check that these are correct as further information becomes available.

### 5. Allocations

#### 5.1. General allocation principles

- Assessment allocates each case to an Investigation team based on geography. The exception is PHSO joint working complaints, which will be sent to the Joint Working Team (See also section on [Joint Team](#)).
- Where it is a possible Housing Ombudsman joint working complaint, Assessment will take advice from the Assistant Ombudsman in IT2, clearly indicating possible joint working in Notes and Analysis. (See [Joint working with the HOS.](#))

- Assistant Ombudsmen are responsible for allocations within the team. The Team Co-ordinator administers the process.
- We will play to people's strengths and preferences as long as this meets the needs of the organisation. But, it is the expectation that any investigator can take any type of complaint and that the composition of an individual's caseload may vary depending on the types of complaints we receive.
- Assessment will have set a task for action using the 20 working days target from receipt by Intake. If the case has been identified as urgent, an alternative target may have been set.
- All complaints will normally be allocated to an Investigator within 20 working days of receipt by Intake. Our aspiration is that the Investigator will contact the complainant within those 20 working days.
- The Team Co-ordinator will write to the complainant within 20 working days of receipt by Intake. The letter will be in the Investigator's name and will say that the case has been allocated and will give the period within which the complainant should expect to hear further (a maximum of 20 working days). The [The 'Fact Sheet G2: How the Ombudsman will investigate your complaint'](#), which includes the message not to send papers unless requested and gives time limits for challenges to our decisions, will also be provided.
- Where the Investigator is able to make initial contact promptly, the Team Co-ordinator's letter need not be sent, but in these circumstances the Investigator must write immediately after first contact and include Fact Sheet G2.
- The 20 working days for the Investigator's first contact from the Team Co-ordinator's letter should be reduced if allocation was not possible fairly promptly after receipt by Intake. This is a matter for the Assistant Ombudsman to provide guidance.
- In the Team Co-ordinator's absence, the Assistant Ombudsman must ensure alternative arrangements for allocating complaints and notifying complainants without undue delay.

## 5.2. Allocations during "business as usual"

---

Allocations are done in teams by Team Co-ordinators at least once a week, from the geographical team list.

Team Co-ordinators will follow the "rules" of the system:

- (a) Investigators need to be allocated a certain number of cases per month, decided by the Assistant Ombudsman;
- (b) the Investigator and Team Co-ordinator decide when allocations are made, provided the Investigator is allocated the agreed number of cases each month;
- (c) the level of ASC, Children's and Planning complaints is set by the Assistant Ombudsman, either on a team level or with individual Investigators;
- (d) account will be taken of any agreed caseloads for different types of cases,
- (e) the oldest cases must be allocated first from the team unallocated list;
- (f) if complaints are not available on the team unallocated list, the oldest suitable case must be taken from the organisation-wide unallocated list;
- (g) complaints will not be allocated to those on leave for three days or longer or those off sick, unless there are exceptional circumstances eg linked complaints to one already allocated.

If, exceptionally, an investigator has a particular difficulty in taking their allocations for that month, they will need to raise this with their Assistant Ombudsman. They cannot tell the Team Co-ordinator not to allocate their normal number of cases to them that month.

### 5.3. Allocations in exceptional circumstances

---

Our ideal position is to have no more than 100 unallocated complaints at any time, which should ensure allocation within 20 working days of receipt.

If there are more than 150 unallocated, the Assistant Ombudsman responsible for allocations will monitor the number weekly to determine whether we move to a more prescriptive allocations procedure. The triggers for this move may be an unexpectedly rapid increase in unallocated complaints and/or an unacceptably high number of unallocated complaints even though there is capacity to take more.

The procedure will be as above, except that:

- Team Co-ordinators will allocate several times per week, in order to bring the unallocated number down
- There should be an average caseload of 25 per FTE in each team. In unusual circumstances, there may be scope to agree something different with individuals/within the team, provided those individuals are meeting or exceeding their agreed number of decisions. Any such exceptions must be agreed with the Executive Director to ensure a consistent approach across the teams
- AOs can agree flexible arrangements as long as the investigator is being allocated the correct number of cases each month overall and continuing to broadly achieve their decision target
- The oldest cases must be allocated first from the organisation-wide unallocated list, rather than the team list; where there is a choice, cases can be taken from the investigator's team unallocated first.

## 6. Record keeping and ECHO

All staff are responsible for complaint information security (See the Information Manual available to LGO staff on the intranet).

### 6.1. ECHO is the primary record

---

ECHO is the primary record for all complaints.

- You must include all material which *may be relevant* to our decision making in the ECHO record. (It may be best to err on the side of caution.) There is an upload limit of 20MB so very large files may need to be split. Where this is not possible, see [Non-ECHO records](#).
- We should not hold information we do not need. Incidental, unsolicited and irrelevant material should not be added to the ECHO record. The presumption is that it should be deleted or destroyed in line with the clear messages on our website and in our literature.
- Intake scan all casework documentation onto ECHO on receipt in the office, but keep the originals for a limited period in case the scanned copy is incomplete or illegible. To ensure the record is complete until destroyed, maintain its security and minimise the demands on Intake, access to the archive or hard copies will not be provided. If a miss-scan is suspected, Intake will check the ECHO record against the archive and re-scan as necessary.

- Where the material cannot be scanned (e.g. large plans), Intake place a note in Notes and Analysis to state that other material is available. The allocated investigator must then task Intake for it to be sent on. The investigator must then ensure it is kept securely and log its new location on Notes and Analysis.
- Sometimes a complainant may send us recordings of conversations or telephone calls with council officers, care home workers etc who are not aware they are being recorded. If a complainant secretly records information there is nothing in law to stop us using it as part of our decision making process if we consider it to be relevant. If we do not think the evidence is relevant to the complaint it should be returned to the complainant and removed from the ECHO record. In the interests of fairness, any recordings which we are considering should be disclosed to the body in jurisdiction for comment when we make our enquiries. We should also tell the complainant at the earliest opportunity that we will share the evidence with the body in jurisdiction.
- When dealing with multiple complaints or Binjs, care needs to be taken to ensure relevant material is copied to all and only relevant records.
- Case email attachments should be sent from ECHO, normally as pdfs. For users of text to voice software (which does not generally read pdfs), there is an option of not sending case email attachments in pdf format.
- Passwords for encrypted material from BinJs are kept here [link available to LGO staff].
- Case emails received should be moved into the ECHO record at the earliest opportunity. (see also the [DO NOT DISCLOSE virtual folder](#).)
- Where a Coinweb email is opened by someone other than the case owner (eg when it has been sent to multiple recipients), the first person to open it should move it to ECHO and set a task for the case owner (and others if they consider this appropriate). The email is automatically deleted from all inboxes as soon as it is moved.
- Documents can be batched together where appropriate, for example as a series of emails on the same subject or a council's response to enquiries, including attachments. The important issue is that any such documents are closely and logically related. The document name must begin with the date (yy mm dd) and it must clearly explain the contents (eg 13 12 25 Xmas thank you letter to Granny, for a thank you letter to Granny sent on Christmas Day 2013).
- ECHO's Notes and Analysis is its heart and will normally be the first information on the complaint the Investigator will consider. It should be used for all internal communications and external information (legislation, guidance, policies, etc) used to reach a decision and for recording key issues from initial phone calls. It should also be used to record developing thinking, if this is not otherwise clear.
- Subsequent calls can be recorded on the Telephone Log (with a reference in Notes and Analysis where the call is substantive), or in Notes and Analysis.
- Notes and Analysis, together with significant correspondence such as enquiry letter, draft decisions and accompanying letters, should show the Investigator's developing thinking about the complaint. Notes and Analysis need not repeat issues which are clearly addressed elsewhere.
- It is important we gather useful data about BinJ performance. So examples of good or poor practice, failure to meet our time targets or failure to properly respond to enquiries should be recorded on the Binj information screen. The page is free format boxes. Hand written notes may be scanned into ECHO, provided they are legible.



## 6.2. The DO NOT DISCLOSE virtual folder and redaction

---

The DO NOT DISCLOSE virtual folder warns staff not to pass on information stored in the folder without considering our Data Protection Act and other responsibilities (see guidance on Access to Information in the Information Manual [available to LGO staff on the intranet]). **It is the investigator's responsibility** to ensure all relevant information is saved, **at the earliest opportunity**, to the DO NOT DISCLOSE virtual folder, with DO NOT DISCLOSE in the record's title. The following must be stored in this way:

- Sensitive casework information. Sensitive casework information is described in the Information Manual [available to LGO staff on the intranet].
- Information which includes the personal data of others.
- Privileged legal advice (including Assignment Requests and requests for '15 minute advice' (see [Legal Advice](#) below)).
- Information accepted in confidence or with a s.32(3) notice. We should not encourage or routinely accept the provision of information in confidence. See [Openness and confidentiality](#), which explains our approach.

Notes and Analysis should contain the reason for saving the information to the virtual folder.

When passing on information, care needs to be taken to redact material which should remain confidential. Nuance software must be used for this purpose (see the guide on how to use Nuance [available to LGO staff on the intranet]). A copy of the unredacted document(s) must be retained in the DO NOT DISCLOSE folder. The redacted copy should be kept on the main record, with 'redacted' included in the file name.

Investigators should ask a Team Coordinator if they need help with sorting and redacting large volumes of unsorted material sent in by BinJs. But the Investigator must make the final check that all material that should not be disclosed has been secured.

## 6.3. Non-ECHO records

---

- Where casework material cannot be saved to ECHO, it may be kept in K:\casework with a note saying why (for large computer files eg films), or separately and securely in a locked cupboard (eg for CDs). In all cases details should be included in Notes & Analysis.
- Investigators may create paper document files where this aids decision making. But the Investigator is responsible for safe storage, and for destroying all paper records when they close the case. The creation of a paper file, and its destruction, must be recorded in the table in Notes and Analysis.
- Encryption must be used with any device (eg memory stick) containing complaint information which is taken off site. (See the Information Manual [available to LGO staff on the intranet].)
- Any hard copy files taken off site must be kept secure and logged in and out of the office using the Document Tracking screen in ECHO.

## 7. The welfare of staff and inappropriate and disruptive behaviour

We take the welfare of staff seriously and will make all reasonable efforts to protect them from potential harm. Sometimes we receive offensive material and comments or face inappropriate or disruptive behaviour. See:

- [LGO Alerts](#) (appended)

- Health and Safety [available to LGO staff on the intranet]
- Guidance on offensive remarks, included in Managing unreasonable complainant conduct [available to LGO staff on the intranet]

## 8. Safeguarding and complainant welfare

Safeguarding concerns may arise at any stage of the investigation process and may not have been evident to staff in Intake or Assessment. All staff must be aware of safeguarding protocols and make referrals to the local authority safeguarding lead in all appropriate cases. Guidance on safeguarding [available to LGO staff on the intranet].

Sometimes we are in contact with someone who threatens to harm themselves or others. See our Guidance on self harm (included in 'Managing unreasonable complainant conduct' [available to LGO staff on the intranet]).

## 9. Reasonable adjustments

In the majority of cases which are passed to Investigation, Intake or Assessment will already have spoken to the complainant. Any reasonable adjustments should already have been identified and entered on ECHO. This information will appear in red on the header of the case summary screen. However some cases may pass quickly to Investigation and may not have had an initial phone call.

- At allocation, Investigators must take note of any reasonable adjustments which have been identified at the Intake or Assessment stage.
- An initial phone call (see [Contact and the Management of Expectations](#)) should include a check of and for reasonable adjustments.
- The possible need for reasonable adjustments may become apparent during the course of an investigation. Investigators must keep complainants' needs under review.
- Investigators are expected to make any reasonable adjustments when communicating with the complainant. See [Help for complainants with different needs](#).

Adjustments may be necessary in dealing with complaints from children and young people.

## 10. Consent

Where a complaint is made by an individual who claims to be acting on behalf of the person affected, Assessment is expected to make a robust decision whether the complaint can be accepted. If the complainant is not a suitable representative, the complaint should be closed by Assessment. The Assessment decision on consent can be checked in Notes and Analysis.

Complaints will not generally be passed to Investigation if there are unresolved concerns about consent. But investigators should review the assessment if issues of concern arise during their investigation.

## 11. Joint working with the PHSO

Please refer to the Joint Working Manual for further guidance on working with PHSO [available to LGO staff on the intranet].

## 12. Joint working with the Housing Ombudsman

Please see the [Memorandum of Understanding](#) with the Housing Ombudsman.

### 12.1. Cases passed through from Assessment

---

Where Assessment has identified that a complaint to us requires investigation, and where it is also known that there are aspects which may engage the jurisdiction of the Housing Ombudsman, advice will be taken from the IT2 Assistant Ombudsman. That Assistant Ombudsman will, where appropriate, liaise with the Housing Ombudsman. If it is decided the case is for joint working, the complaint will be allocated to an Investigator with particular experience in this area. The IT2 Assistant Ombudsman has a list of such Investigators. The allocation will be done in discussion with the Investigator's manager. The IT2 Team Co-ordinator will ensure the case is logged on the joint working spreadsheet. The IT2 Assistant Ombudsman will discuss progress on joint working cases at regular liaison meetings with HOS.

The Investigator will contact the Housing Ombudsman on allocation to let them know who the link is. The Investigator will need to check that we have consent from the person affected to look at the complaint jointly and share information with the Housing Ombudsman. An Investigation Plan will need to be agreed with the Housing Ombudsman and a progress note will be recorded by the Investigator on the joint working spreadsheet every four weeks.

### 12.2. Cases passed to Investigation but where a joint element is later identified

---

In some cases it may emerge that the actions of a social landlord have some relevance to our own investigation. Where it seems that complaint about the landlord could be or has been made, it may be sufficient to advise the complainant about the Housing Ombudsman service. Where it is known that a complaint has already been made to the Housing Ombudsman, we should find out what stage the complaint has reached.

If it seems clear that there is a joint element which could be investigated, the case should be drawn to the IT2 Assistant Ombudsman's attention. They will liaise as necessary with the Housing Ombudsman. If it is decided the case is for joint working, it will be dealt with as above, although the case could remain with the original investigator if that seems appropriate.

### 12.3. Cases that are referred to LGO from the Housing Ombudsman

---

All referrals from the Housing Ombudsman will be in writing and will be sent direct to Intake where they will be processed just like any other incoming complaint. If and when they complete the Assessment stage, they will be allocated for investigation.

## 13. Contact and the management of expectations

### 13.1. Contact with complainants

---

The early stages of dealing with a complaint set the scene. This is where we can gather and provide useful information, manage expectations and help build a constructive professional relationship with the complainant.

Always check whether initial contact has been made by Assessment. This should be recorded in Notes and Analysis on ECHO. However, the Investigator should try to speak to the complainant

themselves at an early stage to clarify anything which has not been addressed. If we do not have a phone number, email or write to the complainant, asking them to contact you or to provide a phone number and convenient time for you to call.

The Investigator needs to:

- find out whether there are any language or other difficulties which might prevent the complainant from taking a meaningful part in the discussion (see [Help for complainants with different needs](#))
- check addresses, email and phone number if these are not clear from existing correspondence the complainant has provided [guidance on this available to LGO staff on the intranet]
- explain your role
- discuss contact arrangements (preferred means, availability, etc)
- test your understanding of the complaint and the alleged injustice
- explore any jurisdictional issues
- find out what the complainant wants to achieve
- explore possible approaches to dealing with the complaint, including any opportunities for joint working
- manage the complainant's expectations, and
- explain what will happen next.

Investigators should record the substance (and subsequent calls) in the Telephone Log (with a reference in Notes and Analysis), or in Notes and Analysis.

Exceptionally, and to avoid duplication of work, if there has already been substantive contact at Assessment and it is clear the complainant or investigation will not be disadvantaged, further telephone contact may not be necessary.

There may be other rare circumstances where no initial contact by telephone is needed, or it is inappropriate. This will be left to the Investigator's discretion, but some examples are where:

- there are a number of linked complaints and there is clearly one lead complainant to whom you have already spoken
- the complainant has specified they do not want to discuss the complaint, or where
- the complainant has recently been abusive to our staff.

## **13.2. Difficult telephone calls**

---

Telephone calls with complainants can sometimes be very difficult, perhaps because of the complexity or sensitivity of the complaint or because of the complainant's behaviour. Sometimes we get complaints about what we said on the telephone or that we terminated difficult calls. A note of any such call should be made as soon as practicable, setting out why the call became difficult, what key points the complainant was making and how you responded.

## **13.3. Referring complaints upwards**

---

Sometimes complainants will want to speak to a manager about their complaint or other concerns. The complainant should be told the matter will be referred to the relevant line manager, but no

promises of action (eg that they will be called, or timescales) should be given. If the complainant wishes to make a complaint about us (including a service complaint), they should normally be asked to put this in writing to ensure there is no misunderstanding. (See [Complaints about us](#) (staff conduct complaint and challenges to decisions). We will accept oral complaints if necessary and as a reasonable adjustment.

### 13.4. Contact from MPs

---

When an MP makes substantive contact, a task should be set as soon as possible for the Assistant Ombudsman, and a draft response should be provided. The Assistant Ombudsman will decide whether the matter should be escalated/from whom letters should be sent. If an MP has referred the complaint or otherwise makes contact and it is unclear that they wish to be actively involved, they should be sent an acknowledgement, invited to let us know if they want to be kept informed of progress and told they will be sent a copy of the decision. (There is a standard letter) It is obviously important that we do as we say.

### 13.5. Keeping in touch

---

Investigators must keep the complainant and BinJ informed of progress. Unless the Investigator has explained good reasons to adopt a different date or frequency (eg, that action is awaiting a decision by a BinJ which will occur on a specific date), this must be at least every 20 working days.

## 14. Openness and confidentiality

### 14.1. Guiding principles

---

Our organisational values include treating people with openness and honesty and respecting their privacy. These values reflect our legal obligations and society's expectations. Generally, complainants have rights to see information we hold about them. But there are also limits to what we can and should provide to them, and to what we can and should publish generally. Detailed guidance on the Data Protection Act, Freedom of Information Act and Environmental Information Regulations, including the strict timescales for compliance is set out in the Information Manual [available to LGO staff on the intranet].

Our starting point is that we should share with both parties to the complaint the information we rely on to make our decision. If requested, we will normally provide the complete complaint file to the complainant.

- We should be specific about what information we want. We should actively discourage all parties from providing unnecessary information.
- We should only keep relevant information. We should not keep information we will not use in decision making. (See [Record keeping and ECHO](#)).
- Personal data about third parties must not be passed on to complainants. We should ask the BinJ to identify any such information, but it is the Investigator's responsibility to check that we comply with the law.
- Our normal practice is to provide a copy of the complaint to the BinJ. We refer to this in our literature.
- Investigators need not withhold third party information which is in the public arena or is clearly in the complainant's possession. But you should not comment on supposition or hearsay.
- Generally, we cannot pass on information obtained in the course of or for the purposes of an investigation except for the purposes of that investigation or report.

- Sometimes information is provided to us in confidence, or in error, or we otherwise consider it should not be passed on. In all the circumstances it would not be in the public interest to disclose information we should not do so. In doubt, Investigators should discuss with the Assistant Ombudsman before disclosing.
- All information which we would not pass on (including legal advice) should include DO NOT DISCLOSE in the title and be kept in the folder of the same name.
- Information should not be withheld merely because it is embarrassing to us or to any other party.
- If you are unable to pass on information, you should explain why.

## 14.2. S.32(3) notices

---

We have wide powers to require information, but the BinJ may sometimes be reluctant to provide us with information. BinJs (other than adult social care providers under Part 3A) may serve notice under s.32(3) of the Act which may prevent us communicating the specified document or information. Record any notices served in ECHO. We should not normally invite the serving of a notice. Your manager should be notified of any notice served.

S.32(3) notices may not be served electronically. If you receive an electronic s.32(3) notice, you should contact the BinJ and ask it to re-serve it through the post, using the Coventry PO Box address. While we do not have a valid Notice, as the BinJ clearly intends that any documents or information named in a s.32(3) notice should be treated as confidential, we should not share them with a complainant, representative or third party while waiting for a Notice which complies with Act.

S.32(3) notices can only be served 'in the public interest'. Any s.32(3) notice we receive should clearly state which documents it applies to and why the BinJ thinks it would not be in the public interest to disclose them to others. If you are concerned about a s.32(3) notice you should query it with the BinJ in the first instance. If the BinJ maintains its position, and you are still not satisfied, you should raise the matter with your manager. If necessary, we can apply to the Secretary of State to discharge a s.32(3) Notice. (See the [LG Act 1974](#))

## 15. Covert recordings

Sometimes a complainant may send us recordings of conversations or telephone calls with council officers, care home workers etc who are not aware they are being recorded. If a complainant secretly records information there is nothing in law to stop us using it as part of our decision making process if we consider it to be relevant. If we do not think the evidence is relevant to the complaint it should be returned to the complainant and removed from the ECHO record. In the interests of fairness, any recordings which we are considering should be disclosed to the body in jurisdiction for comment when we make our enquiries. We should also tell the complainant at the earliest opportunity that we will share the evidence with the body in jurisdiction.

## 16. Referrals for advice or further work

Investigators may need to ask for advice to further an investigation. In the first instance, Investigators should look for readily available advice on the intranet [available to LGO staff] and from colleagues. Advice is also available ad hoc from Assistant Ombudsmen, and in regular supervision sessions.

Sometimes, however, it will be necessary for an Investigator to seek more formal advice. This may be to get legal or specialist advice, or guidance from senior staff. Investigators should always keep the complainant informed about what is happening with their complaint and, if advice is sought, the target timescale for a response. Do not give the name and contact details for the Legal Team, or the Executive Director's or Ombudsman's direct contact details, to members of the public.

### **16.1. Assistant Ombudsman, Executive Director and Ombudsman's advice**

---

In the case of formal advice from your Assistant Ombudsman, the Executive Director or the Ombudsman, the Investigator should clearly set out the issues in ECHO in Notes and Analysis. Requests to Executive Directors and the Ombudsman should normally be through your Assistant Ombudsman.

The Assistant Ombudsman will seek the prompt input of the Executive Director and/or Ombudsman direct (and not through the Executive Assistants) on all cases:

- where there is no established precedent
- where the proposed settlement is contentious or involves a particularly high financial component, and
- where our case handling has potentially put our reputation at risk.

See also [Reports and Adverse Findings Notices](#) for cases which might merit closure in these ways.

The target response time is 10 working days. If necessary, responses should be chased direct (for Assistant Ombudsmen) or through the relevant Executive Assistant.

### **16.2. Legal advice**

---

Please see Getting legal advice on casework in the Legal Team Manual [available to LGO staff on the intranet].

Subject to resources, brief advice (expected to take no more than 15 minutes) may be sought orally, from our legal advisers.

Assistant Ombudsmen must authorise requests for advice which may take longer than 15 minutes. Legal privilege protects confidential communications, and evidence of those communications, between a lawyer and their client – provided that the communications relate to the giving or seeking of legal advice, or are prepared with litigation in mind or as the dominant purpose. The doctrine of legal privilege states, in essence, that information provided to, or advice provided by, a lawyer is confidential – it cannot be disclosed to anyone else. The privilege is absolute, once it has been established and cannot be overridden save in very limited circumstances, such as fraud.

Therefore, when dealing with documents to which legal privilege attaches, it is important not to disclose their contents whether intentionally or otherwise. This is especially relevant when documents are being summarised for a report. In such cases, legal privilege can be lost, if the communication loses its confidentiality.

A good rule of thumb is to ask yourself whether the person who created the document, or its intended recipient, were preparing for or engaging in any form of litigation. This will include advice from counsel, emails, papers provided to counsel, legal opinions obtained by third parties and provided to the Ombudsman during the course of her investigation, and so on.

### **16.3. Specialist External Advice**

---

If an Investigator believes external advice (eg clinical advice, specialist comments on loss of light, etc) is necessary, they must discuss matters with their Assistant Ombudsman. Investigators may not enter into arrangements which have cost implications for the Commission. Investigators should confirm timescales with any person or body which agrees to provide advice, and keep the complainant informed.

A form for seeking clinical advice (via the Health Service Ombudsman) can be found with the Joint Working Manual [on the intranet, for LGO staff only].

## 17. Enquiries of the BinJ

- There is no such thing as an 'informal' enquiry in Investigation.
- Enquiries should be proportionate and tightly focussed on establishing the facts necessary to make a robust decision as soon as possible. The **BinJ and any others involved** should be invited to comment on the proposal to investigate (this is the BinJ notification required by law), but we should positively discourage unnecessary information. There is a standard template letter in ECHO.
- First enquiries should generally be by letter which includes a statement of the complaint and the invitation to comment, attached to an email. The enquiry should normally be accompanied by the complaint itself. An 'enquiry table' (sent as a Word document) may be helpful.
- Simple requests for comments and one or two documents or to check a minor matter may be sent by email without letter attachment.
- But if this is the first enquiry it should include a statement of the complaint and the invitation to comment and should normally be accompanied by the complaint itself.
- A (noted) telephone call may also be used for simple requests. The necessary BinJ notification must accompany the subsequent draft decision. Chasing may be done by telephone or by email.
- Investigators should normally give 20 working days for a response to first enquiries. With urgent cases, eg children out of school, Investigators should ask for the response to be expedited. The timescale for follow up enquiries may be shorter.
- ECHO will measure the BinJ response time to first enquiries (day one is the day after the enquiry is recorded as sent). Enquires by email sent after 17:00 or by letter after the post has gone, and responses received after 17:00, should be recorded sent, or received, the next day.
- If the BinJ does not meet our time target and fails to respond to a chasing letter without good cause (normally within a further 10 working days), the matter should be referred to the Assistant Ombudsman.

## 18. Information from the BinJ

When we have received information from the Binj we should not simply send a 'neutral letter' inviting the PA to comment on what has been said. We must carefully consider the material before passing it on, including identifying any material we should exceptionally not disclose. Having done this, if queries about the response need to be raised with the PA before a draft decision can be made, the PA should be sent a 'guided neutral letter' inviting their response to specific queries. The presumption is that all material provided will be sent at this stage, or with the draft decision.



## 19. Enquiries to others

Enquiries to the PA or representative should reflect reasonable adjustments but should normally be by telephone. When we propose to investigate, we must give an opportunity to comment to any person who is alleged or otherwise appears to have taken or authorised the action complained of. We will normally ask the BinJ to do this for its own staff and contractors. This forms part of the standard enquiries template letter in ECHO.

If inviting comments from or making enquiries to third parties, you must as far as practicable maintain confidentiality. You should explain what we do, and our powers, why we are writing, and ask for their assistance. You should also explain our investigations are conducted in private, and that we do not publish the names of those involved in our investigations. Inviting a telephone discussion if they have any queries may be helpful. You should give a deadline, and chase if this is not met. If there is still no response, you should refer the matter to the Assistant Ombudsman. There is a ECHO template letter.

## 20. Fieldwork

At the start of an investigation and throughout, Investigators must decide what information is required and how to fill any gaps in knowledge. An Investigation Plan, especially for more complex cases, can be useful and is recommended, but is not compulsory.

In most cases, and increasingly through the internet, sufficient information for a robust decision can be gathered from enquiries and desk top research. But fieldwork will sometimes be the most effective way of getting information. If undertaking fieldwork, Investigators must follow the instructions on health and safety [available to LGO staff on the intranet].

### 20.1. Examining files

We can ask for files to be sent to us but should not do this with files currently in use by the BinJ. Files may be held electronically, and a files inspection can often be done with other fieldwork, such as a site inspection or interview, so seeing the files at the BinJ's offices is often the best approach. The Investigator should ensure that an officer will be available to show you how to access any electronic records, and to take copies as needed.

The link officer (or care home manager) should be asked to arrange a mutually convenient date, time and venue.

- The Investigator should insist on seeing the original files, rather than copy documents.
- The 'trail' of documents should be followed to ensure nothing is missing.
- The Investigator should get copies of any documents which we do not already have, and which may be used in our decision making.
- The copies can be sent on, but the Investigator should list the documents to be copied so we can be sure everything has been provided.
- It can be helpful to take notes of the whole content of the file(s), in case there are later questions about what was on the record.
- Any significant gaps must be noted and queried.

### 20.2. Interviews

The way interviews are conducted is very important to our aims of fairness, independence and openness. Interviews often involve people who have had little or no contact with the Ombudsman before and their experience will affect our reputation.

Interviews may be conducted by phone or, more usually, in person. Phone interviews may be particularly appropriate when factual information is being sought and the interviewee's conduct is not in question. Generally, however, a clearer view is gained from a face to face interview.

It is for the Investigator to decide who, if anyone, must be interviewed, but if the BinJ specifically asks that we interview someone this should normally be agreed. Generally, the fewest people necessary to get the information you need for a robust decision should be interviewed.

When arranging interviews with officers, you should make sure they are sent in advance a copy of our notes for interviewees. There is a template in ECHO.

The Ombudsman has the same powers as the High Court in respect of the attendance and examination of witnesses and the production of documents. It may sometimes be necessary to issue a witness summons. In these circumstances, you must liaise with your manager.

At the start of the interview, you should confirm the officer has read the Notes for Interviewees. If not, allow them time to read a copy before you begin. You should make clear:

- the complaint you are investigating
- the purpose of the interview
- that you will make a note which is not intended to be verbatim
- that nothing can be 'off the record'.

The Ombudsman wants to work towards digital recording of interviews. Meantime, Investigators should take notes of what is said and confirm key points. Investigators should also note those present, the place, the date and the start and finish times. At the end of the interview, you should explain what will happen next. We should provide a typed note to the interviewee if requested.

### **20.3. Meeting complainants and visiting sites**

---

Guidance on safe working is here instructions on health and safety [available to LGO staff on the intranet].

Using our offices, or those of the BinJ or a third party organisation, may be the safest way of meeting a complainant. But sometimes visiting the complainant, especially if there are mobility issues or if seeing the property would be of benefit, is more appropriate. Wherever possible you should arrange to be accompanied, either by a member of our staff or by a council officer.

### **20.4. Round table discussions**

---

Round table discussions may create a situation where all the parties can explain their position and those positions can be discussed, so to ensure the process is clear and transparent, the Investigator should not normally discuss the complaint without both parties being present. If there are good reasons for any 'private' discussions before or afterwards, however, the Investigator should explain why to the other party.

Investigators should take care to ensure objectivity throughout, ie that there is no 'ganging up' against either party and that both parties keep to the issues at hand so the meeting does not become acrimonious.

## 21. Jurisdiction and decision making

Assessment will already have determined whether there is jurisdiction to investigate the complaint and will have made an initial assessment of fault and injustice. Investigators do not have authority to overturn Assessment's decision but must keep jurisdictional issues under review at all times. If a decision is considered to be wrong, this must be agreed by the Assistant Ombudsman and this is the only situation in which an Investigation decision will be 'Not to investigate'.

The latest [guidance on jurisdiction](#) is on our website. The [Assessment Code](#) is a useful guide to fault and injustice. Please also see the Casework Guidance Statements [available to LGO staff on the intranet] and [Remedies Guidance](#).

Maladministration and/or service failure are fault. Fault is not a lesser failing than maladministration. It is difficult to envisage service failure which is not maladministration. Provided we present our findings clearly, however, we should not need to go into detailed explanations of the differences.

Our decisions are made on the balance of probability ('more likely than not'). Neither party has to prove what happened using the criminal standard of 'beyond reasonable doubt'. Nor do we have to be 'certain' to reach a conclusion. We should not apply tests of wholly or utterly or Wednesbury unreasonableness and should not describe our final conclusion on the BinJ's actions in terms of reasonableness, but in terms of fault (or otherwise).

Maladministration may also be a breach of the complainant's human rights. It is for the courts to determine whether human rights have been breached, but the Ombudsman may conclude they have been engaged. Useful guidance on human rights can be found at <http://www.justice.gov.uk/downloads/human-rights/human-rights-handbook-for-public-authorities.pdf>

## 22. Withdrawn complaints

If a complainant wishes to withdraw their complaint, and our consideration of it is at a very early stage, we can close the complaint by sending a letter, rather than have to create a full decision statement. When drafting your letter, you will also need to consider whether it would be inappropriate to inform the BinJ of any information other than the category and the fact an investigation was not initiated at the request of a complainant. These might include cases where, having explained that we are precluded in law from considering the issue, a complainant may seek to withdraw. Other cases may include those where, once we explain the process and the fact we are obliged to inform the BinJ of the name and address of the complainant and our decision, people decide not to proceed. In such cases, the letter would not contain any information about the complainant. In all cases, where we decide to issue a letter to close a withdrawn complaint, the publication flag should be marked as 'no'.

## 23. Draft decisions

All investigations (except withdrawn complaints) will have a draft decision sent to the BinJ and any others involved, and to the complainant. Unless it is proposed to publish a report on the complaint, draft decisions will be issued in the form of a draft Statement of Reasons. If enquiries have not already been made, the accompanying letter to the BinJ and any others involved must provide a clear invitation to comment. If they have not been sent previously, the BinJ should be sent a copy

of the complaint and the PA a copy of any comments from the BinJ, checked to ensure we are not passing on material which should be kept confidential. There is a standard letter template in ECHO.

### 23.1. Timing

---

The normal principle is that provisional decisions should be sent to all parties at the same time.

- All parties should be given the same timescale for a response (at the Investigator's discretion, but generally 10 working days).
- Any party may request an extension of time, which can be agreed or refused by the Investigator without reference to the other party/parties.

There may be some situations where, in the particular circumstances of the complaint, the complainant, or a BinJ, the Investigator does not feel it would be appropriate to send the provisional view simultaneously to all sides. An example might be where the proposed settlement is far from the complainant's expectations, but the BinJ might also be very resistant and circumstances are not entirely clear. The Investigator should discuss the complaint with their Assistant Ombudsman and seek approval to depart from the norm, and record this in Notes and Analysis.

### 23.2. Contents

---

We publish our decisions on our website. It is important that they are fit for purpose and reflect a common style and layout.

The draft decision statement sets out our understanding of the complaint, showing what we have done, including a fair and balanced summary of the facts, and a clear analysis which leads to our view. It will be changed to reflect comments and new information, but will normally form the basis of the final decision so must conform to our standards and guidance on the structure for statements which can be found in the Statement of reasons manual (available on the [website](#)). The ECHO template provides the structure for the draft decision statement. The template can be adjusted, but only in accordance with our standards on statements.

The draft decision statement should not include:

- anything to identify an individual
- unnecessary information of any kind (but especially unnecessary personal information).

The draft decision statement will have a covering letter which makes it clear that a final decision has not been made, invites comments by a deadline and has a clear message about what will happen next (including if the complainant does not respond).

Where the provision of personal information is necessary (particularly sensitive data such as data relating to racial origin, political opinions, religious or other beliefs, physical or mental health, sexual life or criminal convictions), and release of that information may have an adverse impact on the complainant, or would not otherwise be known to the body in jurisdiction, it should be contained in the covering letter.

## 24. Remedies

[Guidance on remedies](#) and must be considered where maladministration causing injustice is

identified.

In some cases the Remedies screen is now required.

We will not routinely chase the implementation of a remedy with the BinJ. However, if the Investigator has reason to doubt that the remedy will be implemented, a check should be made. They can create a task in ECHO and chase by entering a date on the Public Value and Remedies screen. This screen should be used if we achieve a remedy for the complainant.

## 25. Delegation

- The Executive Director has delegated authority to make decisions on all complaints including those decided as reports.
- The Head of Assessment, Assistant Ombudsmen, Assessment Team Leaders and Investigators have delegated authority to make decisions on all complaints except those decided as reports. (But see [Decision and decision reasons](#) below.) For new starters, delegation is signed off by their manager with a note to HR and the Professional Practice Co-ordinator.
- Team Co-ordinators have delegated authority to make decisions on premature complaints. (But see Decision and decision reasons below.) For new starters, delegation is signed off by their manager with a note to HR and the Professional Practice Co-ordinator.
- See the full delegation arrangements [available to LGO staff on the intranet].

## 26. Decisions and decision reasons

Decisions must be sent to the BinJ and any others involved, and to the complainant. They should normally be sent by email. If correspondence has been by letter, decisions should not normally be made until two days have passed since the deadline for responses, in case of postal delays. For emailed correspondence, the day after the deadline is reasonable.

We aim to “complete” all our investigations, except where there are exceptional circumstances.

Discontinuing an investigation is an exception. An investigation is complete when we can reach a balance of probabilities decision whether there has been fault, and a balance of probabilities decision whether any such fault caused the complainant injustice. We should reach conclusions on events which go to the heart of the complaint: it will be rare for us to conclude ‘we cannot say’, but in such circumstances the balance of probabilities does not tip in favour of the complainant.

For clarity:

- Investigators may decide to stop investigating if new information comes to light which indicates that the complaint is outside jurisdiction. As the investigation has begun, the status would be ‘discontinued’, and the detailed decision field would be ‘outside jurisdiction’. The council would receive an ‘outside jurisdiction’ decision.
- Investigators can, in exceptional circumstances, decide a complaint is premature. You should seek guidance from your Assistant Ombudsman before doing so. If agreed, it will be recorded as Premature at Investigation.
- There is an option ‘not investigated’ in ECHO when the case clearly should not have come to Investigation (signified by ‘not to investigate’ in the LGA Investigation status box in ECHO). This can only be used with the Assistant Ombudsman’s agreement. A note of the reasoning must be kept in Notes and Analysis.

## 27. Reports and Adverse Findings Notices

The Ombudsman would like to see more reports published, including cases where the remedy has been agreed. Sometimes this may not be warranted, but issues raised may still be suitable for a focus report. All Investigators may be expected to work on reports, focus reports or other publications highlighting lessons from our work.

The six key reasons for publishing a report are:

1. Recurrent fault (specific subject or specific body in jurisdiction).
2. Significant fault, injustice or remedy.
3. Non-compliance with an Ombudsman's recommendation.
4. High volume of complaints about one subject.
5. Significant topical issue (e.g. new legislation).
6. Systemic problems and/or wider lessons.

Any of these reasons may lead to a report. The issues in 4-6 may also warrant a focus report. The Ombudsman does not have to have been critical of a BinJ to issue a report. Where there is significant local concern about an issue the Ombudsman may issue a report to allay those concerns.

All Investigators and Assistant Ombudsmen should take proactive steps to identify potential reports and report issues.

An Adverse Finding Notice under Part 3a of the LGA 74 is the equivalent of LGO issuing a statement of non-compliance under Part 3. The process of issuing an Adverse Findings Notice can be found in [Appendix Two](#).

See a flowchart for the reports process, with timescales with the Reports Manual [available to LGO staff on the intranet].

- When potential reports are identified, the Assistant Ombudsman should submit the "Report Proposal" form to the Ombudsman. If agreed, the Ombudsman maintains oversight of planned reports through ECHO and the 'Reports in Progress' report
- Investigators must take responsibility for meeting timescales, quality and accuracy of the report through to the Legal and Communications stage. There is a timetable for each stage in the process. Movement to the next internal stage is expected within 10 working days (15 working days for preparing the draft report).
- Investigators should draft the report with any help with formatting, proof reading, etc from the Team Co-ordinator. The draft must include conclusions and recommendations.
- The draft must be approved for consultation with the PA and BinJ (and others as necessary) by the Assistant Ombudsman and Ombudsman.
- The Investigator should make any necessary amendments and ensure the report is publishable.
- The Assistant Ombudsman should agree the final report and pass to Legal and then to Communications for final checks.

- The Ombudsman signs off the final report, which should not need further work at this stage.
- The Team Co-ordinator tracks remedies after publication.
- The Ombudsman sees all 'satisfied' letters.

Timelines at each stage are important. The entire process from identifying a potential report to publication should take no longer than 100 days, often less.

## 28. Public value

It is an integral part of the role for Investigators to contribute to public value and learning. At the end of every investigation we should record and review anything we have learned about issues arising from the complaint. Investigators are required to complete the Public Value screen on ECHO when a remedy is obtained and should utilise also the subject forums.

The BinJ Information screen on ECHO may be completed, but is not mandatory. Examples of when an entry might be appropriate include:

- failure to respond to enquiries and chasing
- misleading information being provided, and
- the BinJ 'going the extra mile'.

## 29. Post decision reviews (PDRs) and service complaints (CAUs)

Post decision reviews and service complaints (PDRs and CAUs) are addressed in our fact sheet G4 and there is more detail on the intranet at 'Complaints about us' [available to LGO staff].

- Complaints should normally be put in writing and made within one month of the decision or the action complained of. A manager will decide whether to accept a late complaint.
- We will send an acknowledgement within five working days of receipt.
- Early resolution is important: the person receiving the request or complaint should try to resolve it. A conversation may resolve the matter, but a written response will normally be necessary.
- Consideration will be neutral: the complainant's comments and those of the staff involved will be considered before a decision is made.
- There is only one review or consideration of a complaint. We will not normally respond to further requests or complaints about the same or related matters.
- A response will be sent within 20 working days or a holding letter will be sent.

### 29.1. PDRs (Post decision reviews: challenges to decisions)

There is no right of appeal against our decisions and our reviews are non-statutory. Decisions can be challenged in court on a point of law.

- We will not treat a complaint about a judgment in the course of an investigation, or a provisional view, as a review request. The aggrieved party should set out to the investigator why they disagree, with any supporting information, and the investigator will consider the matter.

- Reviews (including where there is also a separable and substantive service complaint) will be done by a manager who does not line manage the member of staff involved.
- General dissatisfaction is unlikely to change a decision. In deciding whether a full review is needed, we will consider whether credible new information or other matters call the original decision into doubt.
- Reviews of decisions will consider whether the decision was reasonable. The review is not a reinvestigation.
- Re-opened cases will be reinvestigated by the original investigator, unless there are operational reasons not to.

## 29.2. CAUs (Complaints about us: service complaints)

---

For complaints about our service:

- We will not treat a complaint about a judgement in the course of an investigation or a decision (or provisional views or review of a decision) as a complaint about staff conduct.
- Service complaints in the course of an investigation will be addressed by the relevant line manager.

## 26.3 Dealing with requests to speak to a line manager

---

Investigators have the Ombudsman's delegated authority to decide complaints and must take ownership and responsibility for their actions in dealing with them. They may decide to seek advice from their manager, but otherwise the manager is likely to be unfamiliar with the case and will not be the person deciding it or any challenge to the decision. Managers are however responsible for dealing with 'complaints about us' where the member of staff concerned has been unable to resolve the matter.

During a telephone call a customer or someone from a body in jurisdiction may ask to speak to your manager. This could be because the caller is dissatisfied with an aspect of your behaviour and wishes to complain about you. Alternatively it may be because the caller is dissatisfied with your assessment of a complaint. You should try to find out why the caller wishes to speak to your manager. Whatever the reason, you should be patient, polite and as helpful as possible. If you cannot satisfy the caller, and the caller persists in asking to speak with your manager:

- If the manager is in the office and clearly available, you may put the caller on hold and ask the manager whether he/she wishes to take the call. The manager will either take the call or ask you to take/give a message.
- If the manager is out of the office or not clearly available, or declines to take the call, you may explain this to the caller. You should advise the caller that you will pass on the request to the manager, whose name you should give. You should also give the manager's telephone number and/or email address if requested. If your direct line manager will not be available for more than two days, you should refer the request to a different manager and explain this to the caller.
- It will be for the manager to decide how to respond, so you should be careful not to say anything which commits the manager to a particular course of action. So, rather than say "I will get the manager to call you back within two hours", you should say "I will pass on your message that you would like to be called back within two hours".
- You should make a record of the call in ECHO. You should then task the manager, using that day's date as the target date, and starting the description as 'CALL BACK REQUEST.....'



- Once the task is set, it is for the manager to act promptly, and certainly within 24 hours, to decide whether to return the call. If the manager decides not to return the call he/she should either send the caller an email to explain the response or write a letter if there is no email address, and put a note in 'notes and analysis' to explain the response. The manager should then set a task for the Investigator with any further instruction.

## 30. Legal challenges

### 30.1. Judicial Review

An application for judicial review (JR) must be made promptly and in any event not later than three months after the grounds to make a claim first arose. The Court has the power to extend that time, but the claimant must have very good reason for the delay before the Court will do so. There is a pre-action protocol: see [www.hmcourts-service.gov.uk/cms/1220.htm](http://www.hmcourts-service.gov.uk/cms/1220.htm)

Key stages of the pre-action protocol are:

- The claimant should send a letter before claim. The protocol includes a standard format for this letter which people are encouraged to use, and advice about content.
- The defendant – ie, us in the cases of challenges to our actions or decisions – should normally respond within 14 days, using a standard format.

Because of the time limit in the protocol, we need to act promptly on explicit or implicit threats to seek JR. They should be referred to your Assistant Ombudsman immediately. A claimant may not use the standard protocol format for the letter before claim. If a threat of legal action is made but it is not clear whether JR is intended, we must ask whether the letter is intended as a letter before claim and should refer to the time limit for making an application. If the investigator is absent, the Team Co-ordinator must alert the Assistant Ombudsman. They will inform the Executive Director and may involve the Ombudsman. If the Assistant Ombudsman is absent, it should be referred to another Assistant Ombudsman or the Executive Director. Do not delay.

Responses will usually be sent by the Executive Director or our legal advisers. Where a case is referred to our legal advisers, the request should summarise the case and respond to the points being raised. This need not be detailed: the key issue is whether we might have got something wrong and ought to reopen the case. If not, the decision should be flagged, together with any challenges and other relevant documents. This saves time and, therefore, legal costs. In the absence of others, the Assistant Ombudsman will send the letter before claim, relevant papers and a reasoned analysis direct to our legal advisers for a response.

If a JR claim form is received from the Court, time is of the essence, particularly if there has been no pre-action protocol allowing us to formulate grounds of defence. The Acknowledgement of Service must be filed at Court within 21 days of service of the claim form. The procedure is the same as for a letter before claim: the claim form, any documents received with it and the relevant papers are either sent by the Executive Director, or in his absence the Assistant Ombudsman, to our legal advisers. There is unlikely to be much time to prepare a note on the merits of the claim before despatching the papers. But at the very least a copy should be made of the claim form and bundle of documents (if not too voluminous) plus any other papers thought to be relevant.

### 30.2. Allegations of us breaching the Human Rights Act 1998

Claims alleging a breach of human rights must normally be brought within 12 months of the alleged breach. Such allegations may be linked to JR claims or they may be pursued as a free standing claim. If made as part of a JR claim, the JR time limits and protocols will apply.

Allegations of Human Rights Act breaches must be brought to the immediate attention of the Assistant Ombudsman, who will take action as for JR cases.

## **31. Targets and performance**

### **31.1. Quality and Standards**

---

There is a separate Quality and Standards Manual [available to LGO staff on the intranet] which sets out general expectations for the conduct of investigations, and how performance will be measured.

### **31.2. Contact**

---

- All complaints will normally be allocated to an Investigator within 20 working days of receipt by Intake.
- Our aspiration is that the Investigator will contact the complainant within the 20 working days of receipt by Intake.
- Where Assessment has already made first contact, and thereafter, Investigation will keep in touch at least every 20 working days.
- The BinJ will be kept in touch after first contact at least every 20 working days.
- Correspondence need not be acknowledged, but sometimes this may be good customer care.

### **31.3. Advice**

---

We will seek to provide timely advice on complaints. Generally this will be via the intranet or colleagues. Assistant Ombudsmen will give advice face-to-face, ad hoc and at supervision sessions. The target for replies to written requests for casework advice, from all recipients, is 10 working days.

### **31.4. Allocations and decisions**

---

- Teams will be provided with a 'basket of work' to deliver from the Business Plan. This will be broken down amongst Investigators.
- We expect to make around 5,000 decisions per annum in Investigation.
- On average, productivity for teams needed to be 75 decisions per FTE investigator per year.
- Categories of complaint will not be given additional weighting, but Assistant Ombudsmen can recognise that some individual complaints are more complex than others.
- On average, each Investigator needs to take about two new complaints each week.
- We aim to allocate all complaints within 20 days of receipts by Intake.
- Across Assessment and Investigation, we aim to make:
  - 65% of decisions within 13 weeks from receipt in Intake
  - 85% of decisions within 26 weeks from receipt in Intake, and

- 99% of decisions within 52 weeks from receipt in Intake.
- We aim that at no time will we have more than 60 outstanding cases over 52 weeks old.

### **31.5. Challenges and service complaints**

---

We aim to provide a response to challenges to Investigation decisions and to service complaints within 20 working days.

## Appendix 1: LGO Alerts

### A.1.1 What is an LGO Alert?

---

If we have information about a complainant which we believe may represent a serious risk to the safety of our staff, or requires some form of special handling, and this needs to be kept even after the ECHO complaint file is destroyed, we record the information as an 'LGO Alert', which appears in **red** at the top of the opening screen. (This was previously referred to as the '*citizen register*'). The whole of any entry is also shown on the case summary screen.

We may consider a person to be potentially violent either because of information from a third party or directly based on his/her dealings with us. The person is likely to be a complainant but also may be another person involved with the complaint or member of the complainant's immediate family. In ECHO, this is called a "**Possible Health and Safety**" alert.

There will also be cases where an alert is appropriate because an individual's behaviour is disruptive and needs special management. This may include people who continue to contact us about the same complaint after we have told them we will no longer correspond on the issue. In ECHO, this is called a "**Special Handling**" alert.

### A.1.2 Possible Health and Safety Alerts

---

The Information Commissioner has issued guidance on the use of warning alerts. He advises that a decision to put an alert on an individual's file must be based on a "specific incident or expression of clearly identifiable concern by a professional, rather than general opinions about that individual. The individual should pose a genuine risk and the decision should be based on objective and clearly defined criteria."

We should not normally record information before we receive a complaint. Data protection principles 1 and 2 – data should be processed fairly and lawfully and shall only be obtained for one or more *specified and lawful purposes* – must be applied. If we receive data before a complainant comes to us, it should normally be destroyed or returned as we cannot conclude they pose a genuine risk. In the most serious of cases, however, where we conclude contact in the short term is likely and we consider staff should have access to data about an individual from first contacts, we will maintain a record.

When a complaint has been registered, there is a specified and lawful purpose for recording the data. We have a legitimate aim of processing the data, namely to protect staff from potential harm. However, we must be careful to record only factual information which is relevant (ie where we believe there may be a serious risk to the safety of our staff). Generally, information given to us from a body in jurisdiction can be judged to be from a reliable source but we should still be careful not to record speculation, gossip or unsubstantiated opinions.

If we decide to log such information about an individual, it should be recorded in Notes and Analysis by the person who receives it, including the date of receipt and the source. Any new data as a result of contacts during the course of, or following, an investigation should also be recorded in Notes and Analysis. A decision will then need to be taken as to whether the same information should also be recorded as an LGO alert (or as an amendment to an alert). This will depend on the seriousness of the information and consequent risk to our staff. The benefits of recording an LGO Alert are:

- The information is kept separate from the ECHO complaint file and so can be retained after the complaint file is deleted (ie it can be accessed if future complaints are received from the same individual).
- The summary details are displayed clearly in red font when opening the complaint file and so will be unlikely to be missed if different staff are viewing the complaint file.

Examples of our consideration could be:

- Where a subject has a history of displaying inappropriate behaviour to members of the opposite sex, an alert may be appropriate so it can be taken into account when allocating a complaint.
- Where a subject threatened violence to a homelessness officer three years previously when refused temporary accommodation and is now complaining about damp in their home, the lack of actual violence, passage of time, and the different circumstances may make an alert inappropriate.

If a senior manager (AO, Head of Assessment, Customer Services Manager, Executive Director) decides to record an LGO Alert, he/she should use the same essential information as recorded in Notes & Analysis. They do not have to notify the subject if the information causing the alert has come from another body; it is that body's duty to consider telling the subject the information has been passed on. If the information comes from us, the senior manager should normally write to the person involved explaining why we have done this, the information source, how they can appeal and how often the alert will be reviewed. But we must also take account of any concerns for the safety and wellbeing of our staff if we do so and we do not have to disclose we have set an alert (or disclose other subject data) if to do so would be likely to prejudice the proper discharge of our statutory functions. In exceptional circumstances we may choose not to inform the individual concerned but we must have cogent reasons and these must be recorded. We should remember that just because a subject has displayed inappropriate behaviour towards a third party, it does not naturally follow that they will display that same behaviour towards our staff.

We can also set up an Alert when a person's interactions with our staff are highly inappropriate and we wish to warn other staff who may come into contact. Again, in such a situation, we should tell the person involved what we have done and why, explaining their appeal rights and when the alert will be reviewed. Again, if we do not tell the person, we must have cogent reasons, which we must record.

Alerts will be reviewed annually by the named senior manager, and must be reviewed before the complaint file is destroyed. Each case will be different, but key questions will be:

- Was a complaint made?
- Do we still have a complaint?
- How has the subject's behaviour been since the Alert was set?
- How long has it been since we last heard from the subject?
- What was the nature of the action (threat of violence, aggressive behaviour, etc)?
- To whom was the threat addressed?
- What was the context of the action, e.g. homelessness which is ongoing?

Generally, Alerts should be removed within one year of the complaint file being destroyed, but if in doubt a longer period may be appropriate.

Once an LGO Alert is in ECHO, when we receive a new enquiry, ECHO automatically searches the list. If there is a match, Intake staff should refer to the Customer Service Manager or another senior manager who will then issue instructions for managing contact.

### A.1.3 Home visits

---

Alerts can be particularly relevant when we are considering a visit to a complainant's home. But in any event, staff should always adhere to the guidance on External visits and lone working [available to LGO staff on the intranet] before making such a visit.

In exceptional circumstances, it can be appropriate to add a warning alert where a complainant has been abusive, and they do not modify their behaviour when asked to do so. This may result in special instructions to staff, e.g. the complainant should only speak to a specific member of staff or correspond in writing. Abusive behaviour includes making remarks which are racist or sexist, personal and offensive remarks about a member of staff, shouting, swearing or making threats.

### A.1.4 Special Handling Alerts

---

These Alerts are generally used where a complainant continues to contact us about the same complaint after we have told them we will no longer correspond on the issue. Special Handling Alerts allow Intake staff to seek further guidance before registering a new complaint. They may also be used, for example, where someone has threatened self harm and we feel special handling of some form is appropriate.

The senior managers listed previously (plus the ATs) may add, change or review these Alerts.

Reviews on these Alerts should also be undertaken annually and before the complaint file is destroyed.

### A.1.5 Recording information in ECHO

---

There are three key information fields in ECHO. Go to the *Administration* tab, then *Admin – Citizen Register*.

#### **Reason**

The content of this field should essentially be the same as the information recorded in Notes & Analysis (although it may be summarised).

#### **Instruction**

Only the first 40 characters appear in red on the opening screen, so try to limit the entry to below 40 characters.

This field should contain information about what measures the organisation or individual should take. For example:

- Do not visit alone
- Written correspondence only

#### **General Notes**

This field should contain any further detailed information, including information about when the last review took place, and the outcome of that review. It should also detail when the most recent complaint/contact was received.

You must also record the reason if the individual has not been informed of the Alert, and whether you have informed a third party.

To add an Alert to a case, go to the case, then Case Actions>LGO Alert (the case needs to be open, so may need to be re-opened). You will have the full list of alerts which should be filtered as normal. Highlight the Alert you want to add to the record, and click save. This adds the Alert to the record and it will show in the header in red.

## Appendix 2: Process of issuing an Adverse Findings Notice

Section 34I of Part 3a of the Local Government Act 1974 concerns the LGO's powers regarding adverse findings notices (AFN). The process of requiring an AFN under Part 3A is very similar to our power to require a BinJ to publish a statement of non-compliance under Part 3. Essentially, we may require an AFN to be published:

- where the LGO does not hear from the provider in response to a statement of conclusions and recommendations (SOCR);
- where the LGO is not satisfied with the action the provider concerned has taken or proposes to take; or
- where the LGO doesn't receive confirmation that the provider has taken the action proposed to her satisfaction within 1 month.

In accordance with s34I (4) the form of the AFN must be such as agreed between the LGO and the Provider. It may include an explanation for the provider's reasons for having taken no action or not the recommended action. We must make the provider aware of the ability to require a statement of explanation to be included in the notice and, if that is the case, the provider should suggest the wording for us to consider.

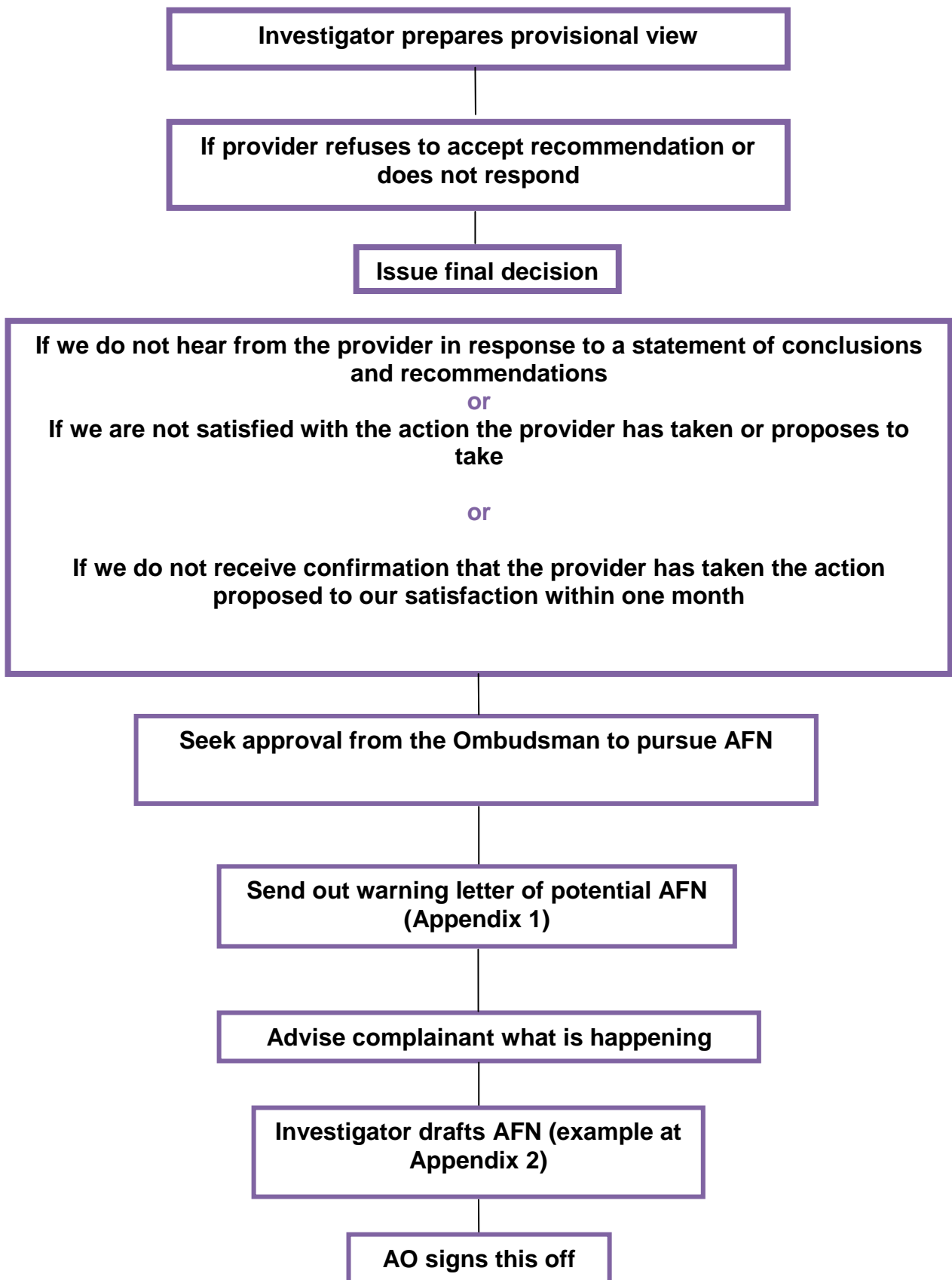
If the provider fails to publish the statement or agree the form of the statement within 1 month of receipt of the notice (or longer if permitted by the LGO), the LGO has a duty to publish it ourselves (s34I (6)). In those circumstances, the provider must reimburse the reasonable expenses incurred in publishing the statement. Either way, requiring an AFN means the LGO is publicly saying that she is not satisfied with a provider's action in response to our recommendations.

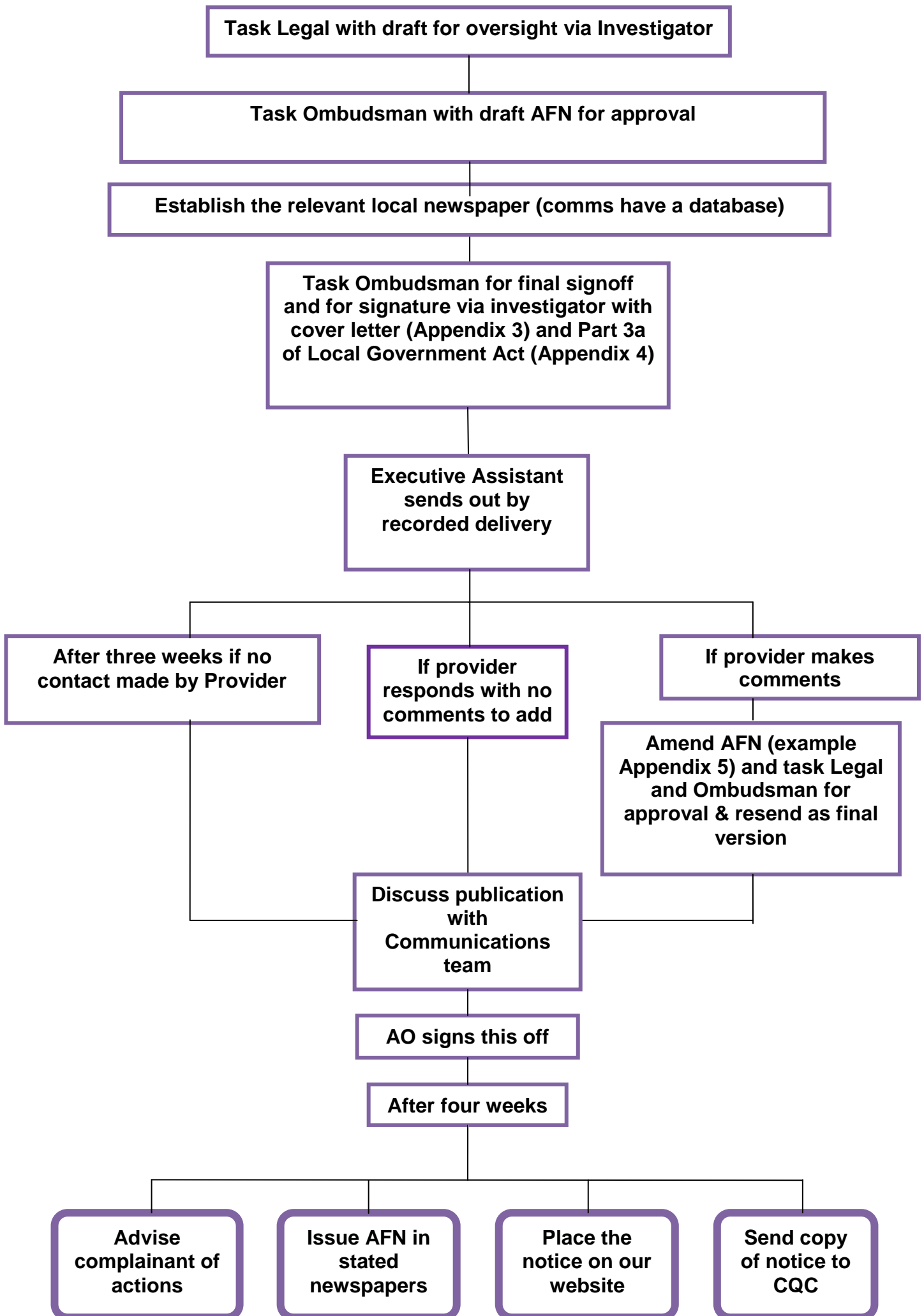
Regarding any allegation of libel made by the provider please note that the defamation provisions in Part 3A Local Government Act 1974 state that *the publication of any matter by inclusion in an adverse findings notice published in accordance with section 34I(3), (4), (5) and (6)* is absolutely privileged (see s34L LGA 1974). This includes where we publish it ourselves if the adult social care provider fails to do so.

This guidance provides investigators with a flow chart to follow where they are considering an AFN with some template letters



## **Adverse Findings Notice (AFN)**





## A.2.1 Warning Letter of Potential AFN

---

Date

Provider name and address

Our ref:

(Please quote our reference when contacting us and, if using email, please put the reference number in the email subject header)

If telephoning contact:

Dear

### Complaint by

**[Name of investigator]** sent his decision on **[name of complainant's]** complaint to **[name of Provider]** on **[insert date]**. This included a recommendation for remedying the injustice to **[name of complainant]**. I enclose further copies of **[name of investigator's]** letter and decision statement. Unfortunately we have not received a response.

As you will know from **[name of investigator's]** letter to you of **[insert date]**, Section 34I of the Local Government Act 1974 requires you, as an adult social care provider, to inform me within a month of receiving the statement with recommendations of the action that you have taken or propose to take. It gives me the power to require an adverse finding notice to be published if I am not satisfied with the action or receive no response.

Or

Section 34I of the Local Government Act 1974 requires you, as an adult social care provider, to inform me within a month of receiving the statement with recommendations of the action that you have taken or propose to take. It gives me the power to require an adverse finding notice to be published if I am not satisfied with the action or receive no response.

In the circumstances, I have decided to allow a further two weeks for you to consider the statement and notify me of the action that you have taken or propose to take in response, before requiring an adverse findings notice to be published. I sincerely hope that this will not be necessary.

I look forward to hearing from you within the next two weeks.

Yours sincerely

Assistant Ombudsman

Enc: Letter and decision statement

## A.2.2 Example Anonymised AFN

---

### Adverse Findings Notice of the Local Government Ombudsman About At Home Care

The Local Government Ombudsman investigates complaints from members of the public who consider that they have been caused injustice by the actions of a local authority or adult social care provider. The Ombudsman seeks redress for the complainant where fault and injustice has occurred. The Ombudsman's recommendations are usually implemented by providers.

#### **Failure to act on the Ombudsman's recommendation**

At Home Care ('the Provider') is an adult social care provider. It has failed to respond to recommendations made following an Ombudsman's investigation of a complaint about services it provided. The Ombudsman has required the Provider to publish this notice under Section 34I of the Local Government Act 1974.

#### **Failure to deal with a complaint properly and for destroying care records**

The complainant contacted the Ombudsman to complain about what he considered to be the poor service provided by the Provider to his mother; he also said that it had failed to deal with his complaint properly.

The Provider does not accept that the Ombudsman has the power to make a recommendation against it. The Provider says that in this case it was acting as an introductory agency and was therefore not carrying out a regulated activity<sup>1</sup>. The Ombudsman decided that this was not the case as Government guidance for providers known as "*Personal care: 'ongoing direction or control of the service'*" (dated March 2012) says that where there is an ongoing role by a "provider", such as care planning, then it will be considered as a regulated activity. In this case the Provider compiled and reviewed the care plan.

During the course of her investigation the Provider refused to provide records to the Ombudsman. It then said that it had destroyed the records so it was no longer possible for the Ombudsman to carry out a proper investigation. The Care Quality Commission's (CQC) essential standards of quality and safety says, at 21C, that service users should feel confident that their records, "are kept or disposed of in accordance with the Data Protection Act 1998 and three years from last date of entry".

The Ombudsman found fault in the Provider destroying the care records. This fault caused the complainant the injustice of never being able to obtain an objective and impartial view on his complaints.

#### **Ombudsman's recommendation to remedy the injustice caused**

The Ombudsman issued a decision statement on 31 January 2013 and, in the absence of a response from the Provider, again on 1 March 2013 and 29 July 2013 recommending that the Provider:

- provide an acknowledgement and apology to the complainant for the failures identified;

---

1 For the LGO's purposes, a 'regulated activity' may be summarised as an activity involving, or being connected with, the provision of adult social care for people who are unable to provide it for themselves due to age, illness or disability and which is provided in a place where those people are living at the time the care is provided. For an activity to be a 'regulated activity' it should be an activity prescribed by regulations.

- review procedures so that records are destroyed in accordance with the Data Protection Act 1998;
- make a payment of £250 to the complainant for the uncertainty caused by the destruction of care records.

The Ombudsman is not satisfied with the action that the Provider has proposed to take in response to her recommendations. Further, there does not appear to have been any process of reflection on the Ombudsman's findings and thus no evidence of having an appreciation of the injustice caused by the fault found through her investigation.

It is for these reasons that the Ombudsman is requiring the publication of this Adverse Findings Notice. The Ombudsman will share this notice with the Care Quality Commission who are the regulators for health and social care in England.

A copy of this notice will be published on the LGO website where a statement of the Ombudsman's decision can also be viewed at [www.lgo.org.uk/decisions/adult-care-services/](http://www.lgo.org.uk/decisions/adult-care-services/).

### A.2.3 Letter to Provider to Accompany AFN

---

DATE

NAME & ADDRESS OF PROVIDER

Our ref:

(Please quote our reference when contacting us and, if using email, please put the reference number in the email subject header)

If telephoning contact:

Dear

Complaint by

We issued the final decision on the above mentioned complaint on [insert date]. Since then you have failed to adhere to the recommendations.

For this reason, I have decided to exercise my power under section 34I (3) Local Government Act 1974 ('the Act') requiring you to arrange for an adverse findings notice to be published. I enclose a draft adverse findings notice for you to consider. The law says this should be in such form as we may agree. In addition, in accordance with s34I(4)(c) of the Act, you are entitled to require a statement to be included in the adverse findings notice which sets out an explanation of your reasons for having taken no action in response to my statement with recommendations.

The adverse findings notice must be published as directed by me. Therefore, if the form of notice is agreed as currently drafted, I require it to be published in the [insert name & details of local paper eg Surrey Advertiser, Stoke Mill, Woking Road, Guildford GU1 1QA (telephone 01483 508700.)]The notice needs to be published in two editions within a fortnight of each other and the first publication should be arranged for the earliest practicable date, but in any event no later than one month (beginning with the date of this letter), unless I agree a longer timeframe in writing.

The adverse findings notice should appear in the form of an advertisement on a news page and be no smaller than a quarter page.

As you can see from the enclosed notice, we will publish the decision statement of [insert date] on our website.

Please let me know whether you agree with the enclosed adverse findings notice and the dates when the adverse findings notice will be published. Please also send me copies of the pages of the newspaper containing the published adverse findings notices as proof of publication. Alternatively, if you do not agree the form of the notice or require your own explanation to be included, please let me know by return. Please do not publish a revised notice without my expressed agreement.

If I do not hear from you within one month (beginning with the date on which you receive this letter) or we cannot reach agreement on the form of the adverse findings notice within that timeframe, I am required to arrange publication of the notice myself in accordance with section 34I (6) of the Act, a copy of which is enclosed. In those circumstances, you must reimburse any reasonable expenses incurred by me by virtue of section 34I (7) of the Act.

I look forward to hearing from you. If you have any queries, please do not hesitate to contact me.  
Yours sincerely

Dr Jane Martin

Local Government Ombudsman

Enc: Adverse findings notice  
Section 34I of Part 3A of the Local Government Act 1974

## A.2.4 Part 3A Local Government Act 1974

---

Complaints about privately funded or arranged adult social care

### 34I adverse findings notices

- (1) This section applies where an adult social care provider receives a statement prepared under section 34H which contains recommendations.
- (2) The adult social care provider concerned must:
  - (a) consider the statement, and
  - (b) notify the Local Commissioner within the required period of the action which the provider has taken or proposes to take.
- (3) The Local Commissioner may by notice require the provider to arrange for an adverse findings notice to be published in accordance with subsections (4) and (5) if the Local Commissioner:
  - (a) does not receive the notification mentioned in subsection (2)(b) within the required period or is satisfied before the end of that period that the adult social care provider concerned has decided to take no action,
  - (b) is not satisfied with the action which the provider concerned has taken or proposes to take, or
  - (c) does not within a period of one month beginning with the end of the required period, or such longer period as the Local Commissioner may agree in writing, receive confirmation that the provider has taken action, as proposed, to the satisfaction of the Local Commissioner.
- (4) An adverse findings notice is a notice, in such form as the adult social care provider concerned and the Local Commissioner may agree, consisting of:
  - (a) details of any action recommended in the statement which the provider has not taken;
  - (b) such supporting material as the Local Commissioner may require;
  - (c) if the provider so requires, an explanation of the provider's reasons for having taken no action on, or not the action recommended in, the statement.
- (5) The adverse findings notice must be published by the adult social care provider in such manner as the Local Commissioner may direct.
- (6) If the adult social care provider:-
  - (a) fails to arrange for the publication of the adverse findings notice in accordance with subsections (4) and (5), or



- (b) is unable, within the period of one month beginning with the date on which the provider received the notice under subsection (3), or such longer period as the Local Commissioner may agree in writing, to agree with the Local Commissioner the form of the adverse findings notice to be published,  
**the Local Commissioner must arrange for an adverse findings notice to be published in such manner as the Local Commissioner considers appropriate.**
- (7) The adult social care provider concerned must reimburse the Commission on demand any reasonable expenses incurred by the Local Commissioner in performing the duty under subsection (6).
- (8) In this section the “required period” means—
  - (a) the period of one month beginning with the date on which the adult social care provider concerned received the statement, or
  - (b) such longer period as the Local Commissioner may agree in writing.

## A.2.5 Example Revised AFN including Providers Comments

---

### Adverse Findings Notice of the Local Government Ombudsman On an investigation into Complaint no.11010340 about At Home Care

The Local Government Ombudsman investigates complaints from members of the public who consider that they have been caused injustice by the actions of a local authority or adult social care provider. The Ombudsman seeks redress for the complainant where fault and injustice has occurred. Where necessary, the Ombudsman makes recommendations, which are for the local authority or adult social care provider to implement.

#### **Failure to act on the Ombudsman's recommendation**

At Home Care ('the Provider') is an adult social care provider. It has failed to respond to recommendations made following an Ombudsman's investigation of a complaint about services it provided. The Ombudsman has required the Provider to publish this notice in accordance with Section 34I of the Local Government Act 1974.

#### **Failure to deal with a complaint properly and for destroying care records**

The complainant contacted the Ombudsman to complain about what he considered to be the poor service provided by the Provider to his mother; he also said that it had failed to deal with his complaint properly.

The Provider does not accept that the Ombudsman has the power to make a recommendation against it. The Provider says that in this case it was acting as an introductory agency and was therefore not carrying out a regulated activity<sup>2</sup>. The Ombudsman decided that this was not the case as Government guidance for providers known as "*Personal care: 'ongoing direction or control of the service'*" (dated March 2012) says that where there is an ongoing role by a "provider", such as care planning, then it will be considered as a regulated activity. In this case the Provider compiled and reviewed the care plan.

During the course of the Ombudsman's investigation the Provider refused to provide records to the Ombudsman. It then said that it had destroyed the records so it was no longer possible for the Ombudsman to carry out a proper investigation. The Care Quality Commission's (CQC) Essential Standards of Quality and Safety says, at 21C, that service users should feel confident that their records "are kept or disposed of in accordance with the Data Protection Act 1998 and three years from last date of entry".

The Ombudsman found fault in the Provider destroying the care records. This fault caused the complainant the injustice of never being able to obtain an objective and impartial view on his complaints.

---

2 For the LGO's purposes, a 'regulated activity' may be summarised as an activity involving, or being connected with, the provision of adult social care for people who are unable to provide it for themselves due to age, illness or disability and which is provided in a place where those people are living at the time the care is provided. For an activity to be a 'regulated activity' it should be an activity prescribed by regulations.

## **Ombudsman's recommendation to remedy the injustice caused**

The Ombudsman issued a decision statement on 31 January 2013 and, in the absence of a response from the Provider, again on 1 March 2013 and 29 July 2013 recommending that the Provider:

- provides an acknowledgement and apology to the complainant for the failures identified;
- reviews procedures so that records are destroyed in accordance with the Data Protection Act 1998;
- makes a payment of £250 to the complainant for the uncertainty caused by the destruction of care records.

## **What the Provider says:**

The Provider has declined to agree the Ombudsman's recommendations for the following reasons:

- The Provider provided a live-in care service to the complainant for several years with no complaints with respect to the service.
- A complaint was made after the death of the service user and when the final invoice was being pursued and this complaint was thoroughly investigated and found to be without merit.
- The Provider does not accept that the LGO has a remit for the service provided, as it was, in the Provider's opinion, an unregulated service. The LGO has not, in the Provider's opinion, conducted an appropriate investigation.
- All care records are kept according to the regulations agreed by Parliament ie 'for an appropriate time'.
- The Provider has declined to give financial compensation to the complainant as a matter of principle as the complainant still owes a considerable sum of money to the very hard-working care-worker introduced by the Provider.
- The Provider has reflected on the findings of the LGO and does not agree with the findings and feels a great injustice in the manner of the investigation and the recommendations.

## **The Ombudsman's response**

The question of whether there are any outstanding arrears on the part of the complainant is disputed and the Provider has not provided an apology nor agreed to review data retention/destruction procedures, as recommended.

Having considered the comments from the Provider, the Ombudsman remains dissatisfied with the Provider's response to her recommendations. Further, there does not appear to have been any appreciation of the injustice caused by the fault found through her investigation.

It is for these reasons that the Ombudsman is requiring the publication of this Adverse Findings Notice. The Ombudsman will share this notice with the Care Quality Commission, which regulates health and social care in England.

A copy of this notice will be published on the LGO website where a statement of the Ombudsman's decision can also be viewed at [www.lgo.org.uk/decisions/adult-care-services/](http://www.lgo.org.uk/decisions/adult-care-services/).